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SUPPLEMENT

TO

DEERING'S

POLITICAL CODE

OF

CALIFORNIA

(Issued in 1903)

THE AMENDMENTS TO THE POLITICAL CODE ENACTED AT THE LEGISLATIVE SESSION OF 1905, WITH CITATIONS OF THE SUPREME COURT OF CALIFORNIA, FROM VOLUMES 138 TO 145, INCLUSIVE, OF CALIFORNIA REPORTS

BY

JAMES H. DEERING

SAN FRANCISCO
BANCROFT-WHITNEY COMPANY
Law Publishers and Law Booksellers
1905

not be construed to prevent or invalidate the issuance, filing, service, execution, or recording of any legal process or written instrument whatever on such Saturday afternoons. En. March 12, 1872. **Am'd.** 1880, 49; 1889, 47; 1893, 187; 1897, 13; 1905, 92.

§ 17. **Words and terms used in the Political Code, definition of.** Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; writing includes printing and typewriting; oath includes affirmation or declaration; every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose"; signature or subscription includes mark, when the person cannot write, his name being written near it by a person who writes his own name as a witness; *provided*, that when a signature is made by mark it must, in order that the same may be acknowledged or serve as the signature to any sworn statement, be witnessed by two persons who must subscribe their own names as witnesses thereto.

The following words, also, have in this code the signification attached to them in this section, unless otherwise apparent from the context:

One—The word "property" includes both real and personal property;

Two—The words "real property" are co-extensive with lands, tenements, and hereditaments;

Three—The words "personal property" includes money, goods, chattels, things in action, and evidences of debt;

Four—The word "month" means a calendar month, unless otherwise expressed;

Five—The word "will" includes codicil;

Six—The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer, and the word "process" a writ or summons issued in the course of judicial proceedings;

Seven—The word "vessel," when used with reference to shipping, includes ships of all kinds, steamboats, and steamships, canal-boats, barges, and every structure adapted to

be navigated from place to place for the transportation of merchandise or persons;

Eight—The term "peace officer" signifies any one of the officers mentioned in section eight hundred and seventeen of the Penal Code;

Nine—The term "magistrate" signifies any one of the officers mentioned in section eight hundred and eight of the Penal Code;

Ten—The word "state," when applied to the different parts of the United States, includes the District of Columbia and the territories; and the words "United States" may include the district and territories.

Eleven—The word "section" whenever used in this code refers to a section of this code, unless some other code or statute is expressly mentioned. En. March 12, 1872. Am'd. 1873-4, 2; 1905, 129.

§ 18. Supp. Cal. Rep. Cit. 142, 56.

§ 19. Supp. Cal. Rep. Cit. Subd. 20—139, 183.

§ 52. Supp. Cal. Rep. Cit. 145, 690. Subd. 3—145, 328.

§ 323. Supp. Cal. Rep. Cit. 144, 344.

§ 325. Supp. Cal. Rep. Cit. 145, 51.

§ 326. Supp. Cal. Rep. Cit. 139, 692.

§ 416. **Fees, secretary of state.** The secretary of state, for services performed in his office, must charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in his office, twenty cents per folio.

2. For comparing a copy of any law, resolution, record, or other document or paper with the original, or the certified copy of the original, on file in his office, five cents per folio.

3. For affixing certificate and seal of state, unless otherwise provided for, two dollars.

4. For filing articles of incorporation, if the capital stock amounts to twenty-five thousand dollars or less, fifteen dollars; if the capital stock amounts to over twenty-five thousand dollars, and not over seventy-five thousand dollars, twenty-five dollars; if the capital stock amounts to over

seventy-five thousand dollars, and not over two hundred thousand dollars, fifty dollars; if the capital stock amounts to over two hundred thousand dollars, and not over five hundred thousand dollars, seventy-five dollars; if the capital stock is over five hundred thousand dollars, and not over one million dollars, one hundred dollars; if the capital stock is over one million dollars, fifty dollars additional for every five hundred thousand dollars or fraction thereof of capital stock over and above one million dollars; for filing articles of incorporation without capital stock, except co-operative associations, five dollars; for filing articles of incorporation of co-operative associations, formed under the act of eighteen hundred and ninety-five, and acts supplementary thereto or amendatory thereof, fifteen dollars.

5. For recording articles of incorporation, twenty cents per folio.

6. For issuing certificate of incorporation, three dollars.

7. For filing certificate of increase of capital stock, five dollars for every fifty thousand dollars or fraction thereof of such increase.

8. For filing certificate of decrease of capital stock, five dollars.

9. For filing notice of removal of principal place of business, five dollars.

10. For filing amended articles of incorporation, unless otherwise provided for, five dollars.

11. For filing certificate of creation of bonded indebtedness, or increase or decrease thereof, five dollars.

12. For issuing certificate of increase or decrease of capital stock, three dollars.

13. For filing certificate on continuance of existence, five dollars.

14. For issuing certificate of continuance of existence, three dollars.

15. For filing claim to trademark, and issuing certificate of filing, five dollars.

16. For issuing certificate of filing of any document, not otherwise provided for, three dollars.

17. For filing certificate of increase or decrease of number of directors, five dollars.

18. For issuing certificate of increase or decrease of number of directors, three dollars.

19. For receiving and recording each official bond, five dollars.

20. For filing notice of appointment of agent, five dollars.

21. For each commission, passport, or other document signed by the governor and attested by the secretary of state (pardons, military commissions, and extradition papers excepted), five dollars.

22. For each patent for land issued by the governor, if for one hundred and sixty acres or less, one dollar; and for each additional one hundred and sixty acres, or fraction thereof, one dollar.

23. For issuing certificate of official character, two dollars.

24. For recording miscellaneous documents or papers, twenty cents per folio.

25. For filing certified copy of order and decree of court, changing name, five dollars.

Exceptions. No member of the legislature or state officer shall be charged for any search relative to matters appertaining to the duties of their office; nor shall they be charged any fee for a certified copy of any law or resolution passed by the legislature relative to their official duties.

Disposition of fees. All fees collected by the secretary of state must, at the end of each month, be paid into the state treasury. Three thousand dollars of such monthly returns shall be credited to and constitute the state library fund, and the balance shall be paid into the general fund of the state. En. March 12, 1872. **Am'd.** 1881, 65; 1895, 63; 1901, 86; 1903, 27; 1905, 623.

§ 418. **Deputy secretary of state, salary.** The annual salary of the deputy secretary of state is two thousand seven hundred dollars. Such salary shall be payable in the same manner as salaries of other state officers. En. March 12, 1872. **Am'd.** 1877-8, 4; 1905, 784.

§ 419. **Bookkeeper, salary.** The annual salary of the bookkeeper shall be twenty-four hundred dollars, payable at the same time and in the same manner as other state officers. En. March 12, 1872. **Am'd.** 1877-8, 4; 1880, 86; 1905, 784.

§ 421. **Watchmen for capitol and governor's mansion.** The watchmen employed in the state capitol and for the governor's mansion, shall have the power of peace officers, and shall receive for their services an annual salary of twelve hundred dollars, payable at the same time and in the same manner as other state officers. En. March 12, 1872. Rep. 1880, 83. En. Stats. 1905, 10.

§ 433. Supp. Cal. Rep. Cit. Subd. 17—144, 684.

§ 439. **Employés of controller.** The controller may appoint one deputy controller, one expert, one bookkeeper and five clerks, all of whom shall be civil executive officers. En. March 12, 1872. **Am'd.** 1877-8, 4; 1905, 785.

§ 440. **Salaries.** The annual salary of the deputy controller is twenty-seven hundred dollars; of the expert two thousand dollars; of the bookkeeper two thousand dollars; and of each clerk one thousand six hundred dollars. All such salaries shall be paid in the same manner and at the same time as the salaries of other state officers. En. March 12, 1872. **Am'd.** 1877-8, 4; 1880, 86; 1905, 785.

§ 441. **Porter.** The controller may appoint a porter for his office at an annual salary of seven hundred and twenty dollars, payable in the same manner and at the same time as the salaries of state officers. En. March 12, 1872. **Am'd.** 1877-8, 4; 1880, 87; 1905, 785.

The act amending §§ 439, 440 and 441 had also the following provision: Sec. 4. All laws and parts of laws and all sections of either of the codes in conflict herewith are hereby expressly repealed.

§ 456. **Deputy state treasurer and bookkeeper, salaries.** The annual salary of the deputy state treasurer is two thousand seven hundred dollars; the annual salary of the bookkeeper to the treasurer of the state is two thousand four hundred dollars. Said salaries shall be payable in the same manner as salaries of other state officers. En. March 12, 1872. **Am'd.** 1877-8, 4; 1880, 87; 1889, 229; 1905, 784.

§ 474. Supp. Cal. Rep. Cit. 143, 198; 143, 201; 143, 202; 143, 205.

§ 485. **Appointments of surveyor-general; salaries.** The surveyor-general may appoint a deputy surveyor-general, who shall be ex-officio deputy of the register of the state land office, and one assistant surveyor-general, who shall be ex-officio assistant register of the state land office, and one clerk, all of whom shall be civil executive officers. The annual salary of the deputy surveyor-general, including his services as ex-officio deputy of the register of the state land office, is two thousand seven hundred dollars. The annual salary of the assistant surveyor-general, including his services as ex-officio register of the state land office, is two thousand dollars. The annual salary of the clerk to the surveyor-general is one thousand six hundred dollars. Said salaries shall be payable in the same manner as [illegible] other state officers. En. March 12, 1872. **Am'd.** 1877-8, 5; 1903, 415; 1905, 784.

§ 515. **Superintendent of public instruction; appointees and salaries.** The superintendent of public instruction may appoint a statistician, a clerk and stenographer, and a text-book clerk, all of whom shall be civil executive officers. The annual salary of the statistician shall be two thousand dollars. The annual salary of the clerk and stenographer shall be sixteen hundred dollars. The annual salary of the text-book clerk shall be sixteen hundred dollars. Said salaries shall be payable in the same manner as salaries of other state officers are paid. En. March 12, 1872. Rep. 1877-8, 5. En. 1880, 87. **Am'd.** 1905, 192.

§ 602. **What constitutes insolvency.** Whenever provisions for the liabilities of any person engaged in the business of fire, marine, or inland navigation insurance in this state, for losses reported, expenses, taxes, and reinsurance of all outstanding risks, estimated at fifty per cent of the premiums received and receivable on all fire risks and marine time risks, at the full premiums received and receivable on all other marine risks, would so far impair his capital stock paid in as to reduce the same below two hundred thousand dollars, or below seventy-five per cent of said capital stock paid in, such person is insolvent; and in case of a person engaged in such insurance in this state, on the mutual plan, if the available cash assets of such person shall not exceed his liabilities, as hereinbefore enumer-

ated, in the full sum of two hundred thousand dollars, such person is insolvent; and wherever provision for the liabilities of any person engaged in the business of insuring any one against loss or damage resulting from accident to or injury suffered by an employé or other person for which the person insured may be liable, for losses reported, expenses, taxes, and reinsurance of all outstanding risks estimated as provided in section 612*a* of the Political Code would so far impair his capital stock paid in as to reduce the same below one hundred thousand dollars, or below seventy-five per cent of said capital stock paid in, such person is insolvent; and whenever provision for the liabilities of any person engaged in any kind of insurance business in this state, other than life, liability and insurance of titles to real estate, provided for in section four hundred and twenty of the Civil Code of this state, for losses reported, expenses, taxes, and reinsurance of all outstanding risks, estimated at such rates as are accepted by the insurance authorities of the state of New York, would so far impair his capital stock paid in as to reduce the same below one hundred thousand dollars, or below seventy-five per cent of said capital stock paid in, such person is insolvent; and in case of a person engaged in such insurance business in this state, on the mutual plan, if his available cash assets shall not exceed his liabilities, as hereinbefore enumerated, in the full sum of one hundred thousand dollars, such person is insolvent. In the case of a company or a corporation engaged in the business of life insurance, whenever its liabilities for losses reported, expenses, taxes, and reinsurance of all its outstanding risks, at rates based upon the American Experience Table of Mortality, and interest at the rate of three and one half per centum per annum, exceeds its assets, such company or corporation is insolvent. In the case of a corporation or company engaged in the business of insurance of the title to real estate, whenever provision for its liability for losses reported, expenses, and taxes, would, after exhausting its surplus fund, so far impair its capital stock paid in as to reduce the same below one hundred thousand dollars, or below seventy-five per cent of said capital stock paid in, such corporation or company is insolvent. En. March 12, 1872. **Am'd.** 1873-4, 9; 1873-4, 62; 1877-8, 14; 1887, 19; 1905, 379.

§ 612*a*. Insurance companies; liabilities, what shall be charged as; reserve fund, how computed; statement to the insurance commissioner. In estimating the condition of any person engaged in the business of liability insurance under the provisions of this article the insurance commissioner shall charge as liabilities all outstanding indebtedness of such person, and the premium reserve on policies in force, equal to the unearned portions of the gross premiums charged for covering the risks, computed on each respective risk from the date of the issuance of the policy. There shall also be charged as a liability to each person engaged in the business of insuring anyone against loss or damage resulting from accident to or injury suffered by an employé or other person for which the person insured may be liable whether a natural person, a firm or a corporation organized under the laws of this or any other state or country a further reserve as hereinafter provided. For the purpose of computing said reserve, each person who has been engaged in liability underwriting for ten years or more, shall, on or before the first day of October in each year, state in writing to the insurance commissioner his experience in the United States, under all forms of liability policies, each year separately according to the calendar years in which the policies were written, during a period of five years commencing ten years previous to the thirty-first day of December of the year in which the statement is made, in the following particulars, namely: the number of persons reported injured under all of the forms of liability policies, whether such injuries were reported to the home office of the given person or to any of his representatives; the amount of all payments made on account or in consequence of injuries reported under such policies; the number and amount, separately, of all suits or actions against policy holders under such policies which have been settled, either by payment or compromise; both of the above amounts to be ascertained as of date of the thirty-first day of August of the year in which the statement is made, and to include in the case of suits all payments made on account or in consequence of the injury from which the suit arose, whether prior to or later than the date at which the suit was brought. Each such person shall thereupon reserve upon all said kind of policies, irrespective of the date at which the policies were issued, (1) for each suit or action pending, on injuries reported prior to eighteen months pre-

vious to the date of making the statement, whether such injuries were reported to the home office of the given person or to any of his representatives, and which is being defended for or on account of the holder of any such policy the average cost thereof as shown by said experience, and (2) for injuries reported under such policies at any time within eighteen months, whether such injuries were reported to the home office of the given person or to any of his representatives, the average cost for each injured person as shown by said experience. From the sum so ascertained the person may deduct (1) the amount of all payments on said pending suits on injuries reported prior to eighteen months, including all payments made on account or in consequence of the injury from which the suit arose, whether prior to or later than the date at which the suit was brought, and (2) the amount of all payments made on account or in consequence of said injuries reported within eighteen months; both of the above amounts to be taken as of the date at which the statement is made. Any person who now issues, or shall hereafter issue, liability policies as aforesaid, and who has not been engaged in liability underwriting for ten years, shall nevertheless, until such times as he may be able to state his experience of the period hereinbefore required, make and maintain a reserve upon all said kind of policies, irrespective of the date at which the policies were issued, determined as follows:

(1) **Suit or action pending.** For each suit or action pending, on injuries reported prior to eighteen months previous to the date of making the statement, whether such injuries were reported to the home office of the given person or to any of his representatives, and which is being defended for or on account of the holder of any such policy the average cost thereof as shown by the average of said experience of all other persons stated as required by this section, and (2) for injuries reported under such policies at any time within eighteen months, whether such injuries were reported to the home office of the given person or to any of his representatives, the average cost for each injured person as shown by the average of said experience of all other persons stated as required by this section; which average costs for suits and for injured persons shall be furnished by the insurance commissioner to each such person on or before the first day of December, in each year. From the sum so ascertained each such person may deduct (1)

the amount of all payments on said pending suits on injuries reported prior to eighteen months, including all payments made on account or in consequence of the injury from which the suit arose, whether prior to or later than the date at which the suit was brought, and (2) the amount of all payments made on account or in consequence of said injuries reported within eighteen months; both of the above amounts to be taken as of the date at which the statement is made. En. Stats. 1905, 380.

§ 622*a*. **Tax on foreign insurance companies; section 622 continued in force.** Every insurance company or association other than life, not organized or incorporated under the laws of California, and doing business in this state, and every other insurance company other than life, whose charter may be owned, or a majority of whose stock may be controlled, or whose business may be carried on in the interest, or for the benefit of any insurance company or association not organized or incorporated under the laws of California, shall annually pay to the insurance commissioner, for the state, a tax of two (2) per cent upon the amount of the gross premiums received upon its business done in the state, during the year ending on the preceding thirty-first day of December, less return premiums, reinsurance in companies or associations authorized to do business in this state, and losses actually paid on its business in this state, and every life insurance company or association not organized or incorporated under the laws of California, which does business or collects premiums or assessments in the state, shall annually pay to the insurance commissioner, for the state, a tax of one per cent upon the amount of the gross premiums received upon its business done in this state during the year ending on the preceding thirty-first day of December. This section shall not be held or construed so as to relieve any company or organization from any tax, fee or other obligation or charge imposed upon it by the provisions of section six hundred and twenty-two of this code, and whenever the taxes imposed by the application of section six hundred and twenty-two exceed those imposed by the application of this section the provisions of the former section shall prevail. En. Stats. 1903, 359. **Am'd.** 1905, 136.

§ 634. **Insurance commissioner; registration of policies of life insurance companies with; deposit of securities with.**

It shall be lawful for any company or corporation, transacting the business of life insurance in this state, to register with the insurance commissioner, such of its policies as may be agreed upon by the company and the insured; such registration to consist in a written or printed list of such policies filed with the commissioner, showing the name and age of the insured, number and date of the policy and the kind and amount of insurance in each case. Such list must be filed with the commissioner within thirty days after the issuance of the first registered policy, and must contain all such policies issued up to date of filing. After that date, the company must, within three days after the first day of each calendar month, file a statement embracing all its registered policies issued since the filing of its last preceding list. Upon filing such lists of policies, from time to time, the company must deposit with the commissioner, as a special deposit for the benefit of such registered policies, securities of the denominations stated in section four hundred twenty-one of the Civil Code as permissible for the investment of the capital and accumulations of insurance companies. Such deposits must be in an amount equal to the full net value of all policies registered up to the time of making the deposit, and must, at all times, be equal to such net value of all registered policies. Upon receipt of such securities the commissioner must immediately deposit them in the state treasury, in accordance with the provisions of section six hundred and eighteen of the Political Code, where they must remain as a special security for the benefit of such registered policies. Such company may, at any time, withdraw any excess of securities above the net present value hereinbefore specified, upon satisfying said commissioner by written proof that such excess exists, and shall be allowed to receive the interest on all securities deposited and to exchange such securities by substituting other securities of the character in which, by the laws of this state, it may invest its funds. En. Stats. 1877-8, 20. **Am'd.** 1905, 151.

§ 635*a*. **Investment company defined.** Every person, corporation, company, association, co-partnership or individual in the State of California now engaged in or that shall hereafter engage in the business of placing or selling bonds, debentures or certificates of investment by whatsoever name

said bonds, debentures or certificates of investment may be known or designated, when such business is conducted on the partial payment or installment payment plan, or in placing or selling any species of bonds, debentures or certificates of investment, on the partial payment or installment plan, wherein or whereby the holder or holders of said bond, debentures or certificates of investment are or may become entitled to claim and receive from such person, corporation, company or association a return, either at a definite or indefinite time, in cash, or in merchandise, or any property, for the partial payments or installments of money so paid, and wherein or whereby the holder may be subject to a fine or forfeiture as a penalty for non-payment of said partial payments or installments, is hereby declared to be an investment company under the provisions of this act. En. Stats. 1905, 156.

§ 635b. **Investment companies not licensed by bank or other commissioners; deposit with state treasurer cash or securities.** Every corporation, company, association, copartnership or individual now engaged in, or that shall hereafter engage in business in this state as an investment company as hereinbefore defined and not licensed by nor under the supervision of the bank commissioners, building and loan commissioners or insurance commissioner, that shall place or sell any bond or bonds, debenture or debentures, certificate or certificates of investment on the partial payment plan whereby the holder or holders of such bond, or bonds, debenture or debentures, or certificate or certificates of investment are or may become entitled to claim and receive from such corporation, company or association, a return, either at a definite or indefinite time, in cash, or in merchandise, or in property, for the partial payments or installments of money so paid, and wherein or whereby the holder may be subject to a fine, or penalty of forfeiture for non-payment of said partial payments or installments, is hereby required to deposit within sixty days after the passage of this act, in cases of corporations, persons, companies or associations now existing and doing business, or before commencing business in cases of persons, corporations, companies or associations not now engaged in business, for the security of the holder or holders of the bonds, debentures or certificates issued by it, with the treasurer

of the State of California, in cash, or in securities to be approved by said treasurer, the sum of five thousand dollars ($5,000), and in addition thereto shall deposit semi-annually, with the treasurer of the State of California, in cash, or securities to be approved by said officer, in the manner aforesaid, ten per cent of all premiums received on the sale of such bonds, debentures or certificates, until the sum so deposited shall amount to the sum of one hundred thousand dollars. En. Stats. 1905, 157.

§ 635c. **Articles of incorporation to be filed with secretary of state; fees to be paid; accompanied with statement.** Every investment company as herein defined now doing business in the State of California shall, within sixty days after the approval of this act, and every investment company hereafter organized to carry on the business of an investment company as hereinbefore defined, shall, prior to engaging in such business, in addition to making such deposit, file with the secretary of state a duly authenticated copy of its articles of incorporation, charter or other instrument authorizing it to do business, and shall pay to the secretary of state the fees provided by law to be paid such officer for filing articles of incorporation within this state for a capital stock of like amount, the same to be accompanied with a statement showing—

(*a*) **Statement to contain what.** The name of the corporation, company, association, co-partnership or individual;

(*b*) The place where the principal business of the company, corporation, association, co-partnership or individual within this state is or is to be carried on;

(*c*) The amount of capital stock of the corporation, association or company, and the amount of paid-up capital stock;

(*d*) The names and residences of the incorporators and its stockholders at the time when said statement is filed, and the name of its officers and date when their terms will expire;

(*e*) The name and address of the officers or representative within the state upon whom process can be served;

(*f*) A statement of the net premiums received from the sale of bonds, debentures or certificates of investment during the preceding six months; which statement shall remain a public record in said office. En. Stats. 1905, 157.

§ 635*d*. Duty of state treasurer; of attorney-general. The treasurer of the State of California shall whenever such fact is brought to his knowledge notify the attorney-general of the non-compliance of any person, company, corporation or association doing business as an investment company as hereinbefore defined in the State of California with the provisions of this act, and the attorney-general shall immediately after receiving such notification commence an action against such corporation, company or association in the name of the people of the State of California;

(*a*) To dissolve such corporation, company or association, if incorporated or organized under the laws of the State of California;

(*b*) To enjoin and restrain such person, corporation, company or association from doing business within the State of California, if an individual or if incorporated and organized at any place without this state. En. Stats. 1905, 158.

§ 635*e*. Withdrawal of deposit upon ceasing to do business. Every corporation, company, association, co-partnership or individual that has made a deposit with the treasurer of the State of California in conformity with and under the provisions of this act, may, upon ceasing to do business within the state, maintain an action against the treasurer of the State of California to withdraw its deposit. It shall be the duty of the attorney-general to defend such action, and if upon judgment being rendered therein it shall be found that said corporation, company or association has no liabilities within the state, the treasurer of the State of California shall return to said corporation, company or association, or to its order, the cash or securities deposited by it under the provisions of this act, but all expenses of such suit shall in any event be paid by such corporation, company or association. En. Stats. 1905, 158.

§ 635*f*. Right to substitute securities for cash deposit. Every corporation, company, association, co-partnership or individual depositing cash or securities with the treasurer of the State of California, in conformity with the provisions of this act, shall have the right to substitute securities in equal value for cash deposited, or other securities of like value for those on deposit upon securing the approval of the treasurer of the State of California, to said exchange,

and the treasurer is hereby authorized to permit such exchange of cash for securities, or securities for other securities, or securities for cash deposited by such corporation, company or association if in his judgment such securities are equal in value to the amount of cash provided by law to be deposited. Every corporation, company or association so making a deposit in compliance with or under the provisions of this act may collect and use any dividend, interest or profits arising on or from any securities deposited with the treasurer of the State of California, provided such security is not thereby depreciated in value. En. Stats. 1905, 159.

§ 635*g*. **Amount of money to be loaned out of reserve fund; collateral may be deposited.** No corporation, company, association, co-partnership or individual doing business within this state as an investment company as hereinbefore defined shall hereafter lend to holders of bonds, debentures or certificates of investment, out of its reserve fund, any amount greater than the proportionate share of such bond, debenture or certificate of investment in said reserve, and whenever such loan is made it shall be evidenced by the note of the borrower and secured by a deposit as collateral security, of the bond, debenture or certificate of investment on which the same is made. Any collateral so taken may be deposited with the treasurer of the State of California as a part of the deposit hereinbefore required, and it may be computed as making so much of said required deposit as the proportionate share of such bonds, debentures or certificates of investment so deposited as the entire reserve fund amounts to not exceeding however the amount loaned. En. Stats. 1905, 159.

§ 635*h*. **Reserve fund.** Every corporation, company, association, co-partnership or individual doing business within this state as an investment company as hereinbefore defined shall apportion not less than forty per cent of every partial payment or installment received from the sale of any bond or bonds, debenture or debentures, certificate or certificates of investment as a reserve fund; said reserve may be invested from time to time within the discretion of the board of directors or governing body of such corporation, company, association, co-partnership or individual. En. Stats. 1905, 160.

§ 635*i*. **Duty of attorney-general.** The attorney-general of the State of California shall, at any time that he may deem proper, or at any time upon the complaint of any holder of any bond or bonds, debenture or debentures, certificate or certificates of investment by whatever name they be known or designated, make any examination of the affairs of any corporation, company or association doing business within this state as an investment company as herein defined, and inquire into the investments of the reserve fund of such corporation, company or association and if upon such examination it shall be ascertained that any corporation, company or association so doing business has not assets to equal in value the total amount of reserve as in the last section required with interest thereon at three and a half per cent per annum compounded annually from the time of the sale of such bonds, debentures or certificates of investment, he shall commence an action in the name of the people of the State of California to restrain and enjoin said corporation from doing business and unless said reserve is made to equal the amount required before judgment is rendered in said action, judgment shall be rendered restraining and enjoining said corporation, company or association from doing business within this state, and he shall in his discretion institute proceedings against such company, corporation, association, co-partnership or individual to have it declared bankrupt. En. Stats. 1905, 160.

§ 635*j*. **Violation of the provisions of this act; penalty.** Every officer, agent or representative of any corporation, company or association doing business within this state as an investment company as hereinbefore defined, who shall place or sell any bond or bonds, debenture or debentures, or certificate, or certificates of investment of any company that has not complied with the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, and not more than five hundred dollars, for each offense, or by imprisonment in the county jail for not less than thirty days, nor more than six months, or by both such fine and imprisonment. En. Stats. 1905, 160.

§ 635*k*. **Not to do business until deposit is made.** No person, firm, corporation, company, co-partnership or individual shall issue, sell or dispose of any species of bond or

bonds, debenture or debentures, certificate or certificates of investment on the partial payment or installment plan whereby the holder or holders of such bond or bonds, debenture or debentures, or certificate or certificates of investment are or may become entitled to claim and receive from such person, firm, company, association or co-partnership a return either at a definite or indefinite time in cash, or in merchandise, or in property, for the payment of installments so paid, and wherein or whereby the holder may be subject to a fine or penalty or forfeiture for non-payment of such partial payments or installments, without having complied with the provisions of this act and first made the deposit required by section 2 of this act. En. Stats. 1905, 161.

§ 635*l*. **Application.** All provisions of this act providing for the making of said deposits, the exchange of securities and the penalties for selling said bonds, debentures or certificates shall apply to all persons, corporations, associations, firms or co-partnerships engaged in the business of investment companies as herein defined. En. Stats. 1905, 161.

§ 658. Supp. Cal. Rep. Cit. 145, 766.

§ 660. Supp. Cal. Rep. Cit. 145, 765.

§ 661. Supp. Cal. Rep. Cit. 145, 765.

§ 662. Supp. Cal. Rep. Cit. 139, 404; 145, 762; 145, 763; 145, 765.

§ 663. Supp. Cal. Rep. Cit. 145, 765.

§ 664. Supp. Cal. Rep. Cit. 145, 765.

§ 665. Supp. Cal. Rep. Cit. 145, 765.

§ 666. Supp. Cal. Rep. Cit. 145, 765; 145, 766.

§ 670. Supp. Cal. Rep. Cit. 145, 770.

§ 672. Supp. Cal. Rep. Cit. 144, 684.

§ 684. **Assistant secretary of state board of examiners.** The governor may appoint an assistant to the secretary

of the state board of examiners, at an annual salary of twenty-four hundred dollars, payable in the same manner as the salaries of other state officers. Said assistant is a civil executive officer. En. March 12, 1872. Rep. 1880, 2. En. Stats. 1891, 194. **Am'd.** 1905, 7.

§ 685. **Clerks for secretary of board.** The board may appoint four clerks for the secretary of said board, who shall be civil executive officers, at an annual salary of sixteen hundred dollars each, payable in the same manner as the salaries of other state officers. En. March 12, 1872. Rep. 1880, 88. En. Stats. 1893, 182. **Am'd.** 1901, 807; 1905, 7.

§ 736. **Justices of supreme court and district courts of appeal, salaries of.** The annual salary of each justice of the supreme court is eight thousand dollars; and the annual salary of each justice of the several district courts of appeal is seven thousand dollars. En. March 12, 1872. **Am'd.** 1905, 224.

§ 737. **Superior judges, salaries of.** The annual salaries of the judges of the superior courts of the city and county of San Francisco are six thousand dollars, of the counties of Alameda and Los Angeles five thousand dollars, San Joaquin, Santa Clara, Santa Cruz, San Mateo, Yuba, Sutter, Sacramento, Butte, Nevada, Sonoma, Colusa, Monterey, San Luis Obispo, Shasta, Siskiyou, Santa Barbara, San Diego, Marin, Mendocino, Tehama, San Bernardino, Kern, Placer, Humboldt, Tulare, Fresno, Solano, Yolo, Contra Costa, Kings, Amador, Calaveras, Stanislaus, El Dorado, Merced, Madera, Tuolumne, Napa and San Benito, four thousand dollars, of the county of Orange three thousand five hundred dollars, and of the county of Alpine two thousand dollars; one-half of which shall be paid by the state and the other half thereof by the county of which the judge is elected or appointed. En. March 12, 1872. **Am'd.** 1905, 75.

§ 739. **Supreme court and district courts of appeal, officers of, and salaries.** The annual salaries of the officers connected with the supreme court are as follows: The reporter of the decisions of the supreme court and of the district courts of appeal, twenty-five hundred dollars; the assistant reporters of the decisions of the supreme court and of the

district courts of appeal, not exceeding three in number, one at twenty-four hundred dollars and two at twelve hundred dollars each; one phonographic reporter, three thousand dollars, and one phonographic reporter, twenty-four hundred dollars; two secretaries of the court, each, twenty-four hundred dollars; each bailiff, fifteen hundred dollars; the librarian, fifteen hundred dollars. En. March 12, 1872. **Am'd.** 1880, 88; 1887, 221; 1897, 205; 1901, 115; 1905, 165.

§ 752. Supp. Cal. Rep. Cit. 143, 172.

§ 758. **District courts of appeal, officers of and salaries.** Each of the three district courts of appeal may employ and appoint the following officers of their respective courts, and whose salaries shall be as follows: One clerk, at twenty-four hundred dollars per annum; one deputy clerk at eighteen hundred dollars per annum; one stenographer, who shall be a deputy clerk, at eighteen hundred dollars per annum; and one bailiff at twelve hundred dollars per annum. En. Stats. 1905, 170.

§ 767. **Supreme court and district courts of appeal, appointment of reporter of decisions of, and assistants.** The reporter of the decisions of the supreme court and of the district courts of appeal, and not more than three assistant reporters thereof, shall each be appointed by the supreme court, and shall each hold office and be removable at the pleasure of the supreme court. En. March 12, 1872. **Am'd.** Stats. 1877-8, 389; 1905, 220.

§ 791. **Notaries public, number governor may commission.** The governor may appoint and commission such number of notaries public for the several counties and cities and counties of this state as he shall deem necessary for the public convenience, except that in cities and counties of the first class the number shall not exceed eighty. En. March 12, 1872. **Am'd.** 1873-4, 13; 1877-8, 24; 1880, 59; 1887, 79; 1889, 377; 1893, 289; 1901, 793; 1903, 244; 1905, 199.

§ 841. Supp. Cal. Rep. Cit. 142, 588.

§ 936. Supp. Cal. Rep. Cit. 140, 189; 140, 223.

§ 964. Supp. Cal. Rep. Cit. 141, 322.

§ 996. Supp. Cal. Rep. Cit. 139, 681.

§ 1033. **State officers to receive no fee in performance of official duty.** The salaries fixed by law for all state officers, elective or appointive, shall be compensation in full for all services rendered in any official capacity or employment whatsoever, during their terms of office, and no such officer shall receive for his own use any fee or perquisite for the performance of any official duty. En. Stats. 1905, 212.

§ 1041. Supp. Cal. Rep. Cit. 141, 430.

§ 1066. Supp. Cal. Rep. Cit. 143, 549.

§ 1067. Supp. Cal. Rep. Cit. 143, 546; 143, 547; 143, 549.

§ 1072. Supp. Cal. Rep. Cit. 142, 517.

§ 1075. Supp. Cal. Rep. Cit. 143, 471.

§ 1077. Supp. Cal. Rep. Cit. 143, 471.

§ 1078. Supp. Cal. Rep. Cit. 143, 471.

§ 1083. Supp. Cal. Rep. Cit. 145, 324; 145, 338; 145, 341; 145, 342.

§ 1094. Supp. Cal. Rep. Cit. 142, 75; 145, 324; 145, 342.

§ 1095. Supp. Cal. Rep. Cit. 145, 324; 145, 342.

§ 1096. Supp. Cal. Rep. Cit. 145, 324; 145, 325; 145, 327; 145, 335; 145, 342. Subd. 11—145, 357.

§ 1097. Supp. Cal. Rep. Cit. 145, 324; 145, 325; 145, 327; 145, 342.

§ 1103. Supp. Cal. Rep. Cit. 145, 324; 145, 325; 145, 342.

§ 1105. Supp. Cal. Rep. Cit. 145, 324; 145, 325.

§ 1109. Supp. Cal. Rep. Cit. 145, 342.

§ 1113. Supp. Cal. Rep. Cit. 145, 325.

§ 1115. **Index to great register.** Within five days after the binding of said books, the clerk shall prepare an index of each book, said index to contain the numbers, names, ages, occupations, and addresses as they appear in said books, and shall have at least one hundred copies of [illegible] index printed. En. March 12, 1872. **Am'd.** 1873-4, 19; 1875-6, 24; 1895, 231; 1899, 62; 1905, 241.

Supp. Cal. Rep. Cit. 145, 325.

§ 1116. Supp. Cal. Rep. Cit. 145, 325; 145, 343.

§ 1149. **Posting of precinct registers.** Before opening polls, the board must post, in some separate, convenient places, easy of access, not less than four printed copies of the precinct registers, as last printed. En. March 12, 1872. **Am'd.** 1873-4, 22; 1905, 195.

§ 1186. Supp. Cal. Rep. Cit. 145, 156.

§ 1193. Supp. Cal. Rep. Cit. 145, 156.

§ 1204. **Election, manner of voting at.** Any person desiring to vote shall write his name and address (or if he be unable to write, shall have the same written for him) on a roster of voters provided for that purpose and announce the same to one of the ballot clerks who shall then in an audible tone of voice announce the same and if the other ballot clerk finds the name on the register, he shall in like manner repeat the name and address, whereupon a challenge may be interposed as provided in section 1230 of this code. In all cases except in those where the name and address of the voter is written on the roster of voters for him, as above provided, it shall be the duty of the ballot clerk, in the presence and view of the bystanders, to compare the signature of the voter on the roster of voters with the signature of that person on the register and no ticket shall be given such voter until such comparison of signatures shall have been made and until such a comparison has been made, as aforesaid, the right of a voter to vote may be challenged. If the challenges be overruled, the ballot clerk shall give the voter a ticket and the clerk

shall write on the register opposite the name of the voter the number of the general ticket given him and also the number of the municipal ticket given him when any city, city and county or town officer is to be elected and the voter shall be allowed to enter the place enclosed by the guard rail as above provided. The ballot clerk shall give him but one general ticket, and where any city, city and county or town officers are to be elected also one municipal ticket, and only one ballot of each kind, and in order to prevent voters from marking their ballots with a pencil, or otherwise contrary to law, it shall be the duty of the ballot clerk, whenever he shall deliver a ballot to any voter, to then orally distinctly state to him, so that it may be heard by the bystanders, that he must mark the ballot with the stamp provided by law, or it will not be counted. En. March 12, 1872. **Am'd.** 1889, 425; 1891, 174; 1895, 301; 1899, 62; 1905, 213.

§ 1205. Supp. Cal. Rep. Cit. 145, 333.

§ 1208. Supp. Cal. Rep. Cit. 145, 327; 145, 335.

§ 1211. Supp. Cal. Rep. Cit. 142, 372; 143, 470. Subd. 4—142, 600.

§ 1215. Supp. Cal. Rep. Cit. 141, 415; 142, 503.

§ 1239. Supp. Cal. Rep. Cit. Subd. 4—145, 328. Subd. 9—145, 328; 145, 691.

§ 1255. Ballots, destruction of number in excess of names on lists. The ballots must be immediately replaced in the box, and if the ballots in the box exceed in number the names on the lists, one of the judges must publicly, and without looking into the box, draw out therefrom singly, and destroy, unopened, a number of ballots equal to such excess; and the board of election must make a record, upon the poll list, of the number of ballots so drawn and destroyed. En. March 12, 1872. **Am'd.** 1873-4, 29; 1905, 194.

§ 1261. Supp. Cal. Rep. Cit. 143, 337.

§ 1264. Election returns, delivery of to county clerks; in San Francisco to registrar of voters; how sealed

and by whom. The member to whom such packages are delivered, must, without delay, deliver such packages without their having been opened, to the county clerk, nearest postmaster, or sworn express agent, who shall endorse on such packages the name of the party delivering them, and date of such delivery. If delivered to a postmaster or express agent, such postmaster or express agent shall forward the packages by the first mail or express to the county seat. In the city and county of San Francisco, such packages must be delivered to the registrar of voters within three hours from the time of adjournment of the board, which time of adjournment must be indorsed upon such package, and upon each poll list, in ink, and signed by a majority of the members of such board. In the city and county of San Francisco the packages must be put up and sealed in the following manner, by an inspector, and at least three other members of the board, and be signed with their respective signatures across (flap) the same written.

Packages what to contain. One package to contain the voted ballots only; one package to contain one poll and tally list only; one package to contain the precinct registers, index to register, list of voters challenged, and list of assisted voters; and one package to contain the unused ballots. En. March 12, 1872. **Am'd.** 1873-4, 30; 1893, 308; 1905, 194.

Supp. Cal. Rep. Cit. 143, 471.

§ 1264*a*. **Election, delivery and custody of roster of voters after; to apply to all elections.** The board of election must before it adjourns, enclose in a cover and seal up and direct to the county clerk or to the registrar of voters, in counties or cities and counties in this state having a registrar of voters, the roster of voters and such sealed package containing such roster of voters must be delivered to that one of its members who has been selected to deliver the other sealed packages required by law. This member must, without delay, deliver the package containing the roster of voters without its having been opened in the same manner and to the same persons and officials as he is required by law to deliver the other sealed packages entrusted to him by said board. All rosters of voters must be kept in the office of the county clerk or in the office of

the registrar of voters in counties and cities and counties having a registrar of voters, as a public record, for a period of one year and when received by such county clerk or registrar of voters, all packages containing such rosters of voters shall be unsealed and such rosters of voters shall at all times be open to the inspection of any citizen. The provisions of this section shall apply to all rosters of voters whether used at elections or primary elections. En. Stats. 1905, 633.

§ 1265. Supp. Cal. Rep. Cit. 143, 341; 143, 471.

§ 1281. Supp. Cal. Rep. Cit. 141, 561.

§ 1357. Supp. Cal. Rep. Cit. 145, 155.

§ 1358. Supp. Cal. Rep. Cit. 145, 155.

§ 1359. **Primary elections to be conducted as other elections.** Elections herein provided for and known and designated as primary elections shall be conducted, managed, and controlled as to selection of precinct officers, their powers and duties, publication of notices, use of original affidavits of registration, indexes and supplements thereto, challenging of voters, voting booths, printing and use of the ballots, cards of instruction, ascertainment of results, time for opening and closing of the polls, and all other details, in the same manner, and subject to the same regulations as are elections for state, district, county, city and county, city, town, and local officers as far as applicable, except as otherwise provided in this chapter; *provided*, that sample ballots shall not be printed or distributed, and that there shall be but one ballot-box at each polling place; *also, provided*, that there shall be printed for each primary election precinct only as many ballots for each participating political party as there are names appearing on the register, indexes or supplements thereto as persons entitled to vote thereat; also, *provided*, that the compensation which shall be allowed to each primary precinct election officer shall not exceed four dollars per day, and it shall be the duty of every person so chosen to act as such primary precinct election officer at such primary election to perform the services required of him in such capacity. That the primary

precinct election officers shall be: an inspector, two judges, two clerks, and one ballot clerk for each primary election precinct, who must have been registered electors thereof for at least thirty days prior to their appointment and who must possess all the other qualifications required of precinct election officers for general elections, *provided* that the same person shall not, without his consent, be compelled to serve as said primary precinct election officer more than once in every two years. En. March 12, 1872. Rep. 1899, 56; 1901, 606. En. Stats. 1901, 607. **Am'd.** 1903, 118; 1905, 173.

Supp. Cal. Rep. Cit. 145, 155.

§ 1360. Supp. Cal. Rep. Cit. 145, 155.

§ 1361. Supp. Cal. Rep. Cit. 145, 155.

§ 1362. Supp. Cal. Rep. Cit. 145, 155.

§ 1363. Supp. Cal. Rep. Cit. 145, 155.

§ 1364. Supp. Cal. Rep. Cit. 145, 155.

§ 1365. Supp. Cal. Rep. Cit. 145, 155.

§ 1366. Supp. Cal. Rep. Cit. 145, 155.

§ 1367. **Name and address and political party written in roster.** A person desiring to vote at any primary election on behalf of any party or for delegates to any convention, shall write his name and address on the roster of voters, or where unable to write shall have the same written thereon for him as provided by law, and he must also write, or where unable to write, have written for him on such roster, opposite such name and address, the name of the political party for whose candidates he in good faith intends to vote at the election for which the primary is held. The ballot clerk shall thereupon announce his name and address and the name of the political party for whose candidates he intends to vote. The voter thereby declares as a test of his right to vote a bona fide present intention of supporting the nominees of such political party or organization at the next ensuing election, and any voter may be challenged as to his right to vote for the candidates of the political party for whom he

desires to vote, and, when so challenged, his right to vote must be withheld unless he make oath or affirmation as to his bona fide present intention to support the nominees of the convention to which delegates are to be so elected for such political party or organization.

It shall be the duty of the inspector to tender such oath or affirmation to any voter challenged on the grounds aforesaid. The voter may likewise be challenged for any cause that might disqualify a voter at a general election. If not challenged, or if the challenge is overruled, or withdrawn, he shall receive from the ballot clerk a ballot having the designation or heading of the political party whose name was written on such roster by or for him and he may be permitted to prepare and vote the same. En. Stats. 1899, 48. Rep. 1901, 606. En. Stats. 1901, 615. **Am'd.** 1905, 173.

Supp. Cal. Rep. Cit. 145, 155.

§ 1367*a*. **Primary elections, duty of ballot clerk to compare signatures of voters; challenge when.** In all cases except in those where the name and address of a person desiring to vote at a primary election has been written on the roster of voters for him, as provided in section 1367 of the Political Code, it shall be the duty of the ballot clerk, in the presence and view of the bystanders, to compare the signature of such person on the roster of voters with the signature of that person on the register and no ballot must be given to such voter until such a comparison of signatures has been made, and until such a comparison of signatures, as aforesaid, has been made, the right of such voter to vote may be challenged. En. Stats. 1905, 441.

§ 1368. Supp. Cal. Rep. Cit. 145, 155.

§ 1369. Supp. Cal. Rep. Cit. 145, 155.

§ 1370. Supp. Cal. Rep. Cit. 145, 155.

§ 1371. Supp. Cal. Rep. Cit. 145, 155.

§ 1372. Supp. Cal. Rep. Cit. 145, 155.

§ 1373. Supp. Cal. Rep. Cit. 145, 155.

§ 1374. Supp. Cal. Rep. Cit. 145, 155.

§ 1375. Supp. Cal. Rep. Cit. 145, 155.

§ 1489. **Normal school trustees, powers of.** The powers and duties of each board of trustees are as follows:

1. **Secretary.** To elect a secretary, who shall receive such salary (not to exceed one hundred and fifty dollars per annum) as may be allowed by the board;

2. **Rules.** To prescribe rules for their government and the government of the school;

3. **Same.** To prescribe rules for the report of officers and teachers of the school, and for visiting other schools and institutions;

4. **Supplies.** To provide for the purchase of school apparatus, furniture, stationery, and text-books for the use of pupils;

5. **Establish grades.** To establish and maintain model and training schools of the primary and grammar grades, and, in their discretion, of the kindergarten grade, and to require the students of the normal schools to teach and instruct classes therein;

6. **President and teachers.** To elect the president of the school, and to elect the teachers, upon their nomination by the president of the school, fix their salaries, and prescribe their duties; *provided*, that after the president or a teacher has served successfully and acceptably in the school for the period of two years prior to or after the passage of this act, his or her appointment thereafter may, at the discretion of the board of trustees, be made for a term not to exceed four years, unless removed for cause;

7. **Control of appropriations.** To control and expend all moneys appropriated for the support and maintenance of the school, and all moneys received for tuition or donations;

8. **Record of.** To cause a record of all their proceedings to be kept, which shall be open to public inspection at the school;

9. **Inspection of accounts, etc.** To keep open to public inspection an account of receipts and expenditures;

10. **Annual report.** To annually report to the state superintendent of public instruction a statement of their transactions, and of all matters pertaining to the school;

11. **Transmitting report.** To transmit with such report a copy of the president's annual report;

12. **May revoke diploma.** To revoke any diploma by them granted, on receiving satisfactory evidence that the holder

thereof is addicted to drunkenness, is guilty of gross immorality, or is reputedly dishonest in his dealings; *provided*, that such person shall have at least thirty days' previous notice of such contemplated action, and shall, if he ask it, be heard in his own defense. En. March 12, 1872. **Am'd.** 1873-4, 75; 1887, 137; 1897, 234; 1899, 77; 1905, 25.

§ 1532. **Superintendent of public instruction, duties of.** It is the duty of the superintendent of public instruction:

First—**Generally.** To superintend the schools of this state.

Second—**Report to governor.** To report to the governor, on or before the fifteenth day of September preceding each regular session of the legislature, a statement of the condition of the state normal schools and other educational institutions supported by the state and of the public schools.

Third—**Report to show.** To accompany his report with tabular statements, showing the number of school children in the state; the number attending public schools, and the average attendance; the number attending private schools, and the number not attending schools; the amount of state school fund apportioned, and the sources from which derived; the amount raised by county, city and county and district taxes, or from other sources of revenue, for school purposes; and the amount expended for salaries of teachers, for building schoolhouses, for district school libraries, and for incidental expenses.

Fourth—**Apportioning state school fund.** To apportion the state school fund; and to furnish an abstract of such apportionment to the state controller, the state board of examiners, and to the county and city and county auditors, county and city and county treasurers and to the county and city and county school superintendents of the several counties of the state. In apportioning said fund he shall apportion to every county and to every city and county two hundred fifty dollars ($250) for every teacher determined and assigned to it on school census by the county or city and county school superintendent for the next preceding school year, as required of the county or city and county school superintendent by the provisions of section 1858 of this code, and after thus apportioning two hundred fifty dollars on teacher or census basis, he shall apportion the balance of the state school fund to the several counties or cities and counties according to their average daily attendance as shown by the reports

of the county or city and county school superintendents for the next preceding school year.

Fifth—**Draw order for moneys apportioned.** To draw his order on the controller in favor of each county or city and county treasurer for school moneys apportioned to the county or city and county.

Sixth—**Prepare blanks and books.** To prepare, have printed, and furnish all officers charged with the administration of the laws relating to the public schools, and to teachers, such blank forms and books as may be necessary to the discharge of their duties, including blank teachers' certificates to be used by county and city and county boards of education.

Seventh—**Laws printed.** To have the laws relating to the public schools printed in pamphlet form, and to supply school officers and school libraries with one copy each.

Eighth—**Visit orphan asylums.** To visit the several orphan asylums to which state appropriations are made, and examine into the course of instruction therein.

Ninth—**Visit schools.** To visit the schools in the different counties, and inquire into their condition; and the actual traveling expenses thus incurred (*provided*, that they do not exceed eighteen hundred dollars per annum) shall be allowed, audited, and paid out of the general fund in the same manner as other claims are audited and paid.

Tenth—**Authenticate with official seal.** To authenticate with his official seal all drafts or orders drawn by him, and all papers and writings issued from his office.

Eleventh—**Bind school reports, etc.** To have bound, at the state bindery, all valuable school reports, journals, and documents in his office, or hereafter received by him.

Twelfth—**Report to controller.** To report to the controller, on or before the tenth day of July of each year, the total number of children in the state between the ages of five and seventeen years, as shown by the latest reports of the county and city and county superintendents on file in his office.

Thirteenth—**Delivery of books, etc., at expiration of term.** To deliver over, at the expiration of his term of office, on demand, to his successor, all property, books, documents, maps, records, reports, and other papers belonging to his office, or which may have been received by him for the use of his office. En. March 12, 1872. **Am'd.** 1873-4, 86; 1880, 29; 1887, 125; 1889, 180; 1891, 152; 1893, 239; 1905, 180.

§ 1543. **County superintendent of schools, duties of.** It is the duty of the county superintendent of each county:

First—**Generally.** To superintend the schools of his county.

Second—**Apportion school moneys.** 1. To apportion the school moneys to each school district, as provided in section one thousand eight hundred and fifty-eight of this code, at least four times a year. For this purpose he may require of the county auditor a report of the amount of all school moneys on hand to the credit of the several school funds of the county not already apportioned; and it is hereby made the duty of the auditor to furnish such report when so required; and whenever an excess of money has accumulated to the credit of a school district by reason of a large census roll and a small attendance, beyond a reasonable amount necessary to maintain a school for eight months in such district for the year, the superintendent of schools shall place said excess of money to the credit of the unapportioned school funds of the county, and shall apportion the same as other school funds are apportioned.

2. **Suspend district.** If in any school district there has been an average daily attendance of only five, or a number of pupils less than five during the whole school year, the superintendent shall at once suspend the district, and report the fact to the board of supervisors at their next meeting. The board of supervisors, upon receiving such report from the superintendent, shall declare the district lapsed, and shall attach the territory thereof to one or more of the adjoining school districts in such manner as may be by them deemed most convenient for the residents of said lapsed district.

3. **Sale of property of lapsed district.** When any district has been declared lapsed, the board of supervisors shall sell or otherwise dispose of the property thereto belonging, and shall place the proceeds of such sale to the credit of the district. Thereupon the superintendent shall determine all outstanding indebtedness of said lapsed district, and shall draw his requisition upon the county auditor in payment thereof. Any balance of moneys remaining to the credit of said lapsed district shall be transferred by the superintendent to the unapportioned school funds of the county, and shall be apportioned as other school funds are apportioned. Should there not be sufficient funds to the credit of the lapsed district to liquidate all of the outstanding

indebtedness thereof, the superintendent shall draw his requisition upon the county auditor pro rata for the several claims.

Third—**Requisitions drawn for expenses; form and approval of demands.** On the order of the board of school trustees, or board of education of any city or town having a board of education, to draw his requisition upon the county auditor for all necessary expenses against the school fund of any district. The requisitions must be drawn in the order in which the orders therefor are filed in his office. Each requisition must specify the purpose for which it is drawn, but no requisition shall be drawn unless the money is in the fund to pay it, and no requisition shall be drawn upon the order of the board of school trustees or board of education against the funds of any district except the teachers' or janitors' salaries, unless such order is accompanied by an itemized bill showing the separate items, and the price of each, in payment for which the order is drawn; nor shall any requisition for teachers' or janitors' salaries be drawn unless the order shall state the monthly salary of teacher or janitor, and name the months for which such salary is due. Upon the receipt of such requisition the auditor shall draw his warrant upon the county treasurer in favor of the parties for the amount stated in such requisition.

The order of the board of school trustees, or board of education, shall be made only on the form of blank prepared by the superintendent of public instruction, and when signed by at least two members of the board of trustees, or the officials authorized to sign orders for the board of education shall be transmitted to the superintendent, who shall, in case he approve said demand, endorse upon it, "Examined and Approved," together with the number and date when approved, and shall, in attestation thereof, affix his signature thereto, and deliver the same to the claimant, or his order, who shall transmit the same to the auditor, who shall, in case he allows said demand, endorse upon it, "Allowed," together with the number and date when allowed, and shall, in attestation thereof, affix his signature thereto, and deliver the same to the claimant; and said demand, when so approved, and signed by the superintendent, and when so allowed and signed by the auditor, shall constitute the requisition on the auditor, and the warrant on the treasury within the meaning of this act.

Fourth—**Register of requisitions.** To keep open to the inspection of the public, a register of requisitions, showing the fund upon which the requisitions have been drawn, the number thereof, in whose favor, and for what purpose they were drawn, and also a receipt from the person to whom the requisition was delivered.

Fifth—**Visit and examine schools.** To visit and examine each school in his county at least once in each year. For every school not so visited the board of supervisors must, on proof thereof, deduct ten dollars from his salary.

Sixth—**Preside over teachers' institute.** To preside over teachers' institutes held in his county, and to secure the attendance thereat of lecturers competent to instruct in the art of teaching, and to report to the county board of education the names of all teachers in the county who fail to attend regularly the sessions of the institute; to enforce the course of study, the use of text-books, and the rules and regulations for the examination of teachers prescribed by the proper authority.

Seventh—**Issue temporary teachers' certificates.** He shall have power to issue, if he deem it proper to do so, temporary certificates, valid until the next semi-annual meeting of the county board of education, to persons holding certificates of like grade granted in other counties, cities, or cities and counties, or upon any certificates or diplomas upon which county boards are empowered to grant certificates without examination, as specified in section seventeen hundred and seventy-five; *provided*, that no person shall be entitled to receive such temporary certificate more than once in the same county.

Eighth—**Distribute laws.** To distribute all laws, reports, circulars, instructions, and blanks which he may receive for the use of school officers.

Ninth—**Reports kept.** To keep in his office the reports of the superintendent of public instruction.

Tenth—**Record of official acts.** To keep a record of his official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants examined, which shall be open to the inspection of any applicant or his authorized agent.

Eleventh—**Approve or reject plans for schoolhouses, except.** Except in incorporated cities having boards of education, to pass upon and approve or reject all plans for schoolhouses. To enable him to do so, all boards of trus-

tees, before adopting any plans for school buildings, must submit the same to the county superintendent for his approval.

Twelfth—**Fill vacancies in school trustees.** To appoint trustees to fill all vacancies, to hold until the first day of July succeeding such appointment; when new districts are organized, to appoint trustees for the same, who shall hold office until the first day of July next succeeding their appointment. In case of the failure of the trustees to employ a janitor, as provided in section sixteen hundred and seventeen, subdivision seventh, of this code, he shall appoint a janitor, who shall be paid out of the school fund of the district. Should the board of school trustees of any district fail or refuse to issue an order for the compensation for such service, the superintendent is hereby authorized to issue, without such order, his requisition upon the county school fund apportioned to such district.

Thirteenth—**Make reports.** To make reports, when directed by the superintendent of public instruction, showing such matters relating to the public schools in his county as may be required of him.

Fourteenth—**Preserve reports.** To preserve carefully all reports of school officers and teachers, and, at the close of his official term, deliver to his successor all records, books, documents, and papers belonging to the office, taking a receipt for the same, which will be filed in the office of the county clerk.

Fifteenth—**Grade schools.** The county superintendent shall, unless otherwise provided by law, in the month of July of each year grade each school, and a record thereof shall be made in a book to be kept by the county superintendent in his office for this purpose. And no teacher holding a certificate below the grade of said school shall be employed to teach the same. En. March 12, 1872. **Am'd.** 1873-4, 88; 1880, 31; 1881, 38; 1887, 127; 1889, 181; 1891, 153; 1893, 240; 1895, 60; 1905, 528.

Supp. Cal. Rep. Cit. 138, 706. Subd. 3—138, 707.

§ 1560. **Teachers' institutes in counties; joint, expenses of; in cities, expenses of.** The superintendent of every county in which there are twenty or more school districts, and of every city and county in the state, must hold at least one teachers' institute in each year; and every teacher employed in a public school in the county must attend such

institute, and participate in its proceedings; *provided*, that the superintendents of two or more counties, city and county, or cities may unite for the purpose of holding a joint institute or convention and may direct the teachers of their respective counties, city and county, or cities to attend the same in lieu of the county, city and county, or city institute, under the same conditions and compensations as herein provided for the county, city and county, or city institute; *provided*, that the expense of such joint institute shall be borne equally by the counties participating therein, and the county auditor of each county participating in such joint institute shall draw his warrant in favor of the county superintendent upon requisition of said superintendent for such proportionate share of such county and the money paid thereon shall be applied to the expense of said joint institute; *provided further*, that cities employing seventy or more teachers may have a separate institute to meet at least once a year, the sessions to be of not less than three nor more than five days; *and provided further*, that teachers attending such city institute shall not be required to attend the county institute.

The expenses of such city institutes, not exceeding two hundred dollars annually, shall be paid from the special school funds of said city. En. March 12, 1872. **Am'd.** 1873-4, 92; 1891, 156; 1893, 244; 1905, 52.

§ 1564. **County teachers' institutes; expenses, how paid.** The county superintendent must keep an accurate account of the actual expenses of said institute, with vouchers for the same, and draw his requisition upon the county auditor, who shall draw his warrant on the unapportioned county school fund to pay said amount; *provided*, that any counties participating in joint institutes as provided by section 1560, such amount shall not exceed two hundred ($200.00) dollars; and in counties that do not participate in such joint institutes, said amount shall not exceed three hundred ($300.00) dollars, for any one year. En. March 12, 1872. **Am'd.** 1873-4, 92; 1880, 34; 1893, 244; 1905, 145.

§ 1575. Supp. Cal. Rep. Cit. 140, 561.

§ 1576. Supp. Cal. Rep. Cit. 140, 561.

§ 1576*a*. **Clerk to board of school trustees, appointed when; term of office and salary.** In any school district organized

under the preceding section, and which is also a high school district, and which districts are governed by a board of three trustees, and which districts have, by the last preceding school census, a school population of more than fifteen hundred, the trustees may appoint a clerk, who shall not be one of their number, to act for both districts, to hold office during the pleasure of the board; and said board may fix his salary at a sum not exceeding twenty-five dollars per month for each district, which sum shall be paid in the same manner and from the same funds as other incidental expenses of the districts are paid. En. Stats. 1905, 550.

§ 1577. **School districts, formation of new; petition for.** First—No new school district shall be formed at any other time than between the first day of October and the tenth day of February, nor at that time unless the parents or guardians of at least fifteen census children, residents of such proposed new district, and residing at a greater distance than two miles by a traveled road from the public schoolhouse in the district in which said parents or guardians reside, present a petition to the superintendent of schools, setting the boundaries of the new district asked for; *provided*, that the provision requiring the petitioners shall reside a distance of more than two miles by a traveled road from the said public schoolhouse may be dispensed with when the petition shall be signed by the parents or guardians of fifty or more census children residents of a district containing more than three hundred census children.

Second—**Boundaries changed; consolidation of districts.** The boundaries of a school district, except as provided in section one thousand five hundred and fifty-one of the Political Code, shall be changed only between the first day of October and the tenth day of February in any year, and then only when at least ten heads of families residing in the districts affected by the proposed change of boundaries shall present to the superintendent of schools a petition setting forth the changes of boundaries desired, and the reasons for the same; *provided*, that two or more districts lying contiguous may at any time be united to constitute but one district, whenever a petition signed by a majority of the heads of families residing in each of said districts shall be presented to the superintendent of schools.

Third—**Joint districts, formation of; concurrent action required.** Joint districts (that is, districts lying partly in

one county and partly in another) may be formed at any time between the first day of October and the tenth day of February in any year, whenever a petition signed by the parents or guardians of at least fifteen census children, residents of such proposed joint district and residing at a greater distance than two miles by a traveled road from any public schoolhouse, shall be presented to the superintendent of each county affected by the proposed formation of the joint district; *and provided further*, that the provision requiring that the petitioners shall reside a distance of more than two miles by a traveled road from any public schoolhouse may be dispensed with when the petition shall be signed by the parents or guardians of fifty or more census children residents of districts any one of which contains more than three hundred census children. All the provisions relative to the formation of joint districts shall be by concurrent action of the superintendent and the board of supervisors of each county affected; *still further provided*, that by concurrent action of the boards of supervisors and the county school superintendents, contiguous school districts or parts of such school districts lying in different counties may, on proper petitions as above required, be united to form a joint school district, and the school property within the territory thus united shall become the property of the newly formed joint school district.

Fourth—**Children residing in newly formed districts.** The children residing in any newly formed district, in any district whose boundaries have been changed, or in any joint district, shall be permitted to attend the school in the district or districts from which the newly formed district was constituted until the first day of July next succeeding the formation or change.

Fifth—**Transfer of funds.** Whenever a district shall be united with a municipality or with another district, all funds belonging to said district shall be transferred, by requisition of the superintendent of the county upon the county auditor, to the municipality or district with which said district is united. En. March 12, 1872. **Am'd.** 1873-4, 92; 1875-6, 27; 1880, 34; 1881, 40; 1885, 16; 1889, 184; 1893, 245; 1903, 358; 1905, 404.

§ 1593. **Election of school trustees.** An election for school trustees must be held in each school district on the first Friday of April of each year, at the district schoolhouse,

if there is one, and if there is none, at the place to be designated by the board of trustees.

1. **Number of.** The number of school trustees for any school district, except where city boards are otherwise authorized by law, shall be three. No person shall be deemed ineligible to the office of trustee on account of sex.

2. **Election in new districts.** In new school districts the school trustees shall be elected on the first Friday of April subsequent to the formation of the district, to hold office for one, two and three years, respectively, from the first day of July next succeeding their election.

3. **Vacancies.** When a vacancy occurs from any of the causes specified in section nine hundred and ninety-six of this code, the county superintendent of schools shall appoint a suitable person to fill such vacancy until the first day of July next succeeding the appointment, and a trustee shall be elected at the next April election, to hold office for the remainder of the term.

4. **Term of.** Except as provided in subdivision two and three of this section, one trustee shall be elected annually, to hold office for three years from the first day of July next succeeding his election, or until his successor shall be elected, or appointed, and qualified. En. March 12, 1872. **Am'd.** 1873-4, 80; 1880, 35; 1881, 40; 1887, 142; 1889, 185; 1893, 247; 1905, 48.

§ 1598. **Who are entitled to vote for school trustees.** Every elector, resident of the school district, who is a qualified elector of the county, and who is registered in the precinct where the election is held at least thirty days before the election, may vote thereat. En. March 12, 1872. **Am'd.** 1880, 35; 1905, 432.

§ 1600. **Challenge of voter.** Any person offering to vote may be challenged by any elector of the district, and the judges of election must thereupon administer to the person challenged an oath, in substance as follows: "You do swear that you are a citizen of the United States, that you are twenty-one years of age, that you have resided in this state one year, in this county ninety days, and in this school district thirty days preceding this election, and that your name is on the great register of this county, and was on the great register of a precinct in this school district at least thirty days before this election, and that you have not be-

fore voted this day." If he takes the oath prescribed in this section, his vote must be received, otherwise his vote must be rejected. En. March 12, 1872. Am'd. 1873-4, 94; 1880, 35; 1905, 433.

§ 1615. First. **New school districts; trustees of.** When a new district is organized, such of the trustees of the old district as reside within the boundaries of the new shall be trustees of the new district until the expiration of the time for which they were elected.

Second. **Joint districts; trustees of; terms of.** When joint districts are formed, three trustees shall be elected at the April election next succeeding the formation thereof, to hold office for one, two and three years, respectively, from the first day of July next succeeding their election. The terms of the trustees in the districts uniting to form the joint district shall expire on the formation of said joint district, and the superintendent of the county, in which lies the district having the greater number of census children shall appoint two trustees, and the superintendent of the county in which the other district lies shall appoint one trustee, to hold office until the first day of July next succeeding the formation of the joint district. En. March 12, 1872. Am'd. 1893, 248; 1905, 53.

§ 1617. Supp. Cal. Rep. Cit. 138, 704; 139, 459; 139, 460; 139, 461. Subd. 7—139, 453. Subd. 8—139, 454. Subd. 20—139, 454.

§ 1623. Supp. Cal. Rep. Cit. 140, 561.

§ 1669. Supp. Cal. Rep. Cit. 141, 372; 141, 376; 141. 377.

§ 1670. Supp. Cal. Rep. Cit. 140, 558; 140, 560; 141, 373; 141, 374; 141, 375; 141, 376; 141, 377; 141, 378; 141, 379; 141, 381; 141, 382. Subd. 7—141, 372. Subd. 14—141 372. Subd. 15—141, 372. Subd. 18—141, 372.

§ 1671. *First*—**High schools, establishment of; special election.** There may be established in any county in this state one or more county high schools; *provided*, that at any general or special election held in said county after the passage of this act, a majority of all the votes cast at such election, upon the proposition to establish a high

school, shall be in favor of establishing and maintaining such county high school or schools at the expense of said county.

Second—**General election; special.** The board of supervisors at any general election to be held in any county after the passage of this act, upon the presentation of a petition signed by fifty or more qualified electors, taxpayers of said county, must submit the question of establishing and maintaining a county high school to the qualified electors thereof. The board of supervisors, if they deem it expedient, may order a special election for such purpose. Said election shall be conducted in the manner prescribed by law for conducting elections. The ballots at such election shall contain the words, "For county high school," and the voter shall write or print thereafter on the ballot the word "yes" or the word "no."

Third—**Location of school, estimate of cost, rent of rooms.** If the majority of all the votes cast on the proposition to establish a county high school are in the affirmative, it shall be the duty of the board of supervisors, within thirty days after canvassing said vote, to locate the school in some suitable and convenient place in said county. The board of supervisors shall also estimate the cost of purchasing a suitable lot, erecting a building, and furnishing the same, for the accommodation of such school, together with the cost of conducting such school for the next twelve months; *provided*, that the high school board may rent suitable rooms for the accommodation of the school. If rooms can be obtained in public school buildings in the place in which said school shall be located, such rooms shall be given the preference.

Fourth—**Levy of special tax.** When such estimate shall have been made, the board of supervisors shall thereupon proceed to levy a special tax upon all of the assessable property of the county, except as provided in subdivision twentieth of section one thousand six hundred and seventy of the Political Code, sufficient to raise the amount estimated as necessary for the purchasing of a lot, procuring plans and specifications, erecting a building, furnishing the same, fencing and ornamenting the grounds, and the cost of running said school for the following (12) months. Said tax shall be computed, entered on the tax roll, and collected, in the same manner as other taxes are computed,

entered, and collected; and the amount so collected shall be deposited in the county treasury, and be known and designated as the county high school fund, and shall be drawn from the treasury as other moneys so appropriated are drawn.

Fifth—**Deeded to board of education.** When the board of supervisors shall have properly provided and completed the building, together with the necessary fencing of the lot so purchased, they shall cause the same to be deeded to the county board of education, who shall hold the same in trust for the county.

Sixth—**Duty of board of education.** It shall be the duty of the county board of education to furnish to the board of supervisors, annually, an estimate of the amount of money needed to pay all of the necessary expenses of running said school; to adopt the necessary text-books (the state series shall be used in grades and classes for which they are adapted); to adopt and enforce a course of study for said schools; to employ suitable teachers, janitors, and other employés, and discharge such employés when deemed advisable by them, and to do any and all other things necessary to the proper conduct of the school. The course of study shall embrace a period not less than three years, and it shall be such as will prepare graduates therein for admission to the state university.

Seventh—**Duty of board of supervisors; county high school fund; requisitions on fund.** It shall be the duty of the board of supervisors to include in their annual tax levy an amount sufficient to maintain the county high school; and such amount when collected and paid into the county treasury shall be known as the "county high school fund," and may be drawn therefrom in the following manner, for the purpose of defraying the expenses of conducting said county high school: The county board of education shall draw their order on the county superintendent of schools, in the manner and form provided by law for school district trustees drawing orders on their district school funds, and the county superintendent shall draw his requisition on the auditor, who shall draw his warrant on the county treasurer in favor of the person or persons to whom the amount called for in such requisition is due. All orders, requisitions, and warrants drawn on the "county high school fund," in all other respects, except as specified in this act, shall be subject to the law governing school districts.

Eighth—**In case of more than one school.** In case the qualified electors of any county deem it expedient to establish and maintain more than one county high school, then such additional school or schools may be established and maintained in the manner prescribed in this act for establishing and maintaining a county high school.

Ninth—**Examination for admission.** All county high schools shall be open for the admission of graduates holding diplomas from the grammar schools of the county, and to all pupils of the county who can pass the examination for admission. The examination for admission shall be conducted by the county board of education and the principal of the county high school.

Tenth—**Principal of.** Nothing in this act shall be construed so as to prevent the principal of the high school from acting as principal of the grammar school of the school district in which the high school is located, if so desired by the trustees of said school district.

Eleventh—**Validating the former establishment of.** All proceedings for the formation and organization of high school districts and the establishment of county, city, city and county, union, joint union and district high schools had, prior to the passage and approval of this act, are hereby validated and declared legal, and said high school districts and high schools are hereby declared to be legally formed, organized and established; and in all cases where high school districts and high schools have heretofore been, or may hereafter be, formed, organized and established, the certificate of the county superintendent mentioned in subdivision four of section one thousand, six hundred and seventy of the Political Code when filed with the county clerk, when the result of the election as therein declared is in favor of the establishment of the high school, shall after the expiration of one year from the date of such filing be conclusive evidence that such high school district and high school has been legally established. En. March 12, 1872. Rep. 1880, 47. En. Stats. 1893, 274. **Am'd.** 1895, 296; 1905, 719.

Supp. Cal. Rep. Cit. 141, 372; 141, 376; 141, 377.

§ 1699. Supp. Cal. Rep. Cit. 138, 701; 138, 706.

§ 1775. **County boards of education; school certificates issued by.** (1) County boards of education may, without examination, grant certificates as follows:

(a) High school certificates: (1) To the holders of credentials approved by the state board of education in accordance with subdivision two of section fifteen hundred and twenty-one of this code; (2) To the holders of special credentials issued by said state board, in accordance with said subdivision; (3) To holders of high school certificates issued by any county, or city and county, board of education in this state; (4) To holders of normal school diplomas accompanied by documents from the faculty of the state university, provided for in subdivision five of section fifteen hundred and three of this code.

(b) Grammar school certificates: To the holders of the following credentials: (1) Life diplomas or certificates of any state; *provided*, the state board of education in this state shall have decided that said diplomas or certificates represent experience and scholarship equivalent to the requirements for the elementary life diploma in California; (2) California state normal school diplomas, San Francisco city normal school diplomas heretofore granted, and other normal school diplomas; *provided*, that the state board of education of this state shall have recommended the normal school issuing said diploma as being of equal rank with the state normal schools of California; (3) Diplomas from the University of California, or from any other university that shall be declared by the state board of education to be of equal rank with the University of California, when the holders have completed the prescribed course in the pedagogical department of the state university, or a pedagogical course that said state board shall declare to be equivalent to such prescribed course, and have been recommended by the faculty of the university issuing such diploma; (4) Grammar school or grammar grade certificates of any county, or city and county, of California.

(c) Kindergarten-primary certificates: (1) To the holders of kindergarten-primary certificates of any county, or city and county, of California; (2) To the holders of diplomas of graduation from the kindergarten department of any state normal school of this state; (3) To the holders of credentials, showing that the applicant has had professional kindergarten training in an institution approved by the state board of education, and also general education equivalent to the requirements for graduation from the kindergarten department of a California state normal school;

(4) To the holders of special kindergarten certificates of any county or city and county of Cailfornia granted prior to July 1, 1901; *provided* that the holders of such special kindergarten certificates have had at least two years' training in a kindergarten training school and have taught for a period of at least two years in a public kindergarten school in the county or city and county wherein such special kindergarten certificates were granted.

(2) Grammar school certificates may be granted to the holders of primary grade certificates who shall pass satisfactory examinations in such branches as do not appear on their certificates, or in the record of the examination upon which the original certificate was granted.

(3) All certificates and diplomas now valid in California shall continue in force and effect for the full term for which they were granted. County boards of education may renew any certificate issued by them prior to the adoption of this law, and now in force, and may renew certificates granted by authority of this law. Renewed certificates shall be valid for a period equal to that for which they were originally granted.

(4) When the holder of any certificate or state diploma shall have taught successfully in the same county, or city and county, for five years, the board of education of such county, or city and county, may grant a permanent certificate of the kind and grade of the class in which said applicant has been teaching, valid in the county, or city and county, in which issued, during the life of the holder, or until revoked for any of the causes designated in subdivision four of section seventeen hundred and ninety-one of this code; *provided*, that such permanent certificate shall in no case be of a higher grade than the grade of the certificate or state diploma on which the teaching has been done; and for a permanent high school certificate twenty months of said teaching shall have consisted of regular high school work; *and provided further*, that a certificate when renewed the second time, or any time thereafter, shall become, by such renewal, a permanent certificate, if the holder of said certificate shall have complied with all of the conditions of this subdivision.

(5) Whenever any holder of a diploma from the state university, or from any other university that shall be declared by the state board of education to be of equal rank

with the state university, shall present to said state board satisfactory evidence of having had two years' successful experience as a teacher, subsequent to graduation, accompanied by satisfactory evidence that such holder has completed the prescribed course in the pedagogical department of the University of California, or a pedagogical course equivalent thereto, the state board of education shall grant to the holder of said university diploma a document signed by the president and secretary of the state board, showing such fact, and said diploma, accompanied by said document of the state board attached thereto, shall become a permanent certificate of qualification to teach in any grammar or primary or high school in the state, valid until such time as the said document shall be revoked by said state board of education, for any of the causes shown in subdivision four of section seventeen hundred and ninety-one of this code. En. March 12, 1872. **Am'd.** 1873-4, 103; 1875-6, 29; 1877-8, 30; 1880, 42; 1881, 45; 1889, 193; 1891, 163; 1893, 260; 1901, 673; 1905, 488.

§ 1791. Supp. Cal. Rep. Cit. 139, 148.

§ 1793. Supp. Cal. Rep. Cit. 139, 147; 139, 148; 145, 247.

§ 1817. **Public schools, county superintendent of, to estimate county school tax.** The county superintendent of every county, and of every city and county, must, at least fifteen days before the first day of the month in which the board of supervisors of such county, or city and county, is required by law to levy the amount of taxes required for county, or city and county purposes, furnish to the board of supervisors and to the auditor, respectively, an estimate in writing of the minimum amount of county or city and county school fund needed for the next ensuing school year. This amount he must compute as follows:

First: **To ascertain number of teachers.** The county superintendent of every county and of every city and county must ascertain in the manner provided for in subdivisions one and two of section 1858, of the Political Code, the total number of teachers for the county, or the city and county.

Second: **To calculate amount required per teacher; maximum rate.** The county superintendent of every county and of every city and county must calculate the amount required to be raised at five hundred and fifty dollars per

teacher. From this amount he must deduct the total amount received from state apportionments for the next preceding school year and the remainder shall be the minimum amount of county, or city and county school fund needed for the ensuing school year; *provided*, that if this amount is less than sufficient to raise a sum equal to seven dollars for each census child in the county, or city and county, then the minimum amount shall be such a sum as will be equal to seven dollars for each census child in the county, or city and county; but in no case shall the rate of tax levied for county or city and county school purposes in any one year exceed fifty cents on each one hundred dollars of taxable property in the county or city and county. En. Stats. 1873-4, 105. **Am'd.** 1880, 43; 1889, 194; 1893, 263; 1903, 162; 1905, 625.

§ 1818. Levy and collection, rate how determined; special fund for teachers' salaries; liability for violation of this act. The board of supervisors of every county or city and county must annually, at the time and in the manner of levying other county or city and county taxes, levy and cause to be collected for the county or city and county school fund a tax, to be known as the county or city and county school tax, the maximum rate of which must not exceed fifty cents on each one hundred dollars of taxable property in the county or city and county, nor the minimum rate be less than sufficient to raise the minimum amount estimated to be raised by the county superintendent of any county, or of any city and county, in accordance with the provisions of section eighteen hundred and seventeen of the Political Code.

The supervisors must determine the minimum rate of the county or city and county school tax as follows:

They must deduct fifteen per cent from the equalized value of the last general assessment roll and the amount required to be raised divided by the remainder of the assessment roll, is the rate to be levied; but if any fraction of a cent occur, it must be taken as a full cent on each one hundred dollars.

(a) In every county, or city and county, constituting but one school district, a portion of the school funds for any fiscal year subsequent to the present fiscal year equal in amount to the sum total of teachers' salaries for the next preceding fiscal year payable out of the school fund in question, shall constitute a special fund, to be used only for the

payment of teachers' salaries as hereinafter provided, and to be known as the teachers' salary fund; *provided,* that no portion of any school fund consisting of moneys which are applicable exclusively to some special purpose defined by statute other than the payment of teachers' salaries shall be deemed a part of such school fund for the purposes of this act. Out of the teachers' salary fund shall be paid the salaries of all teachers holding in the fiscal year positions which existed in the preceding fiscal year. No other demands whatsoever shall be paid out of such fund. If, by any increase in the rate of salaries, or for any other cause, such fund should be insufficient to pay all of the salaries which constitute demands against it such fund shall be divided pro rata among such demands, and the portion of such demands unpaid shall be payable out of any available money in the school fund of which said teachers' salary fund constitutes a part. If teachers' positions other than or in addition to those which existed in the preceding fiscal year are created, the salaries of teachers holding such different or additional positions shall not be paid out of the teachers' salary fund, but out of any other available moneys; but the amount of such salaries shall be included in determining the amount of the teachers' salary fund for the succeeding fiscal year. If there remain in any fiscal year any money in any teachers' salary fund after the payment of all legal demands for such year against such fund, such money so remaining shall be transferred to the general school fund of which said teachers' salary fund is a part, and shall become available for the payment of any unpaid lawful demands against such general fund. It shall be the duty of any officer whose duty it is to audit demands against the school fund of any such county, or city and county in this state, on or before the first Monday of the fiscal year, to file with the board of supervisors of such county, or city and county, and with the officer whose duty it is to pay demands against the school fund of any such county, or city and county, a certified copy of the statement made by him of the amount of money used in such county, or city and county, for the payment of teachers' salaries for the next preceding fiscal year, and no demands against the school funds of such county, or city and county, shall be allowed, audited, or paid until said copies shall have been filed, as aforesaid. The allowance, audit, or payment of any demand out of a teachers' salary fund in violation of this act, may

be enjoined by the suit of any teacher whose salary is payable from said fund. The members of the governing body of any such county, or city and county, in this state, who shall pass a demand against said teachers' salary fund in violation of the provisions of this act, and any officer whose duty it is to audit demands against such fund and who shall audit a demand against such teachers' salary fund in violation of the provisions of this act, and any officer whose duty it is to pay demands against such funds, and who shall pay a demand against said teachers' salary fund in violation of this act, shall each be jointly and severally liable therefor to any teacher whose salary is payable from said fund who shall have been damaged by the allowance, audit, and payment of such demand. En. March 12, 1872. **Am'd.** 1873-4, 105; 1880, 43; 1903, 403; 1905, 625.

Supp. Cal. Rep. Cit. 141, 381.

§ 1820. **Disposition of proceeds of tax.** All moneys derived from this tax in each county, or city and county, must be paid into the treasury thereof to the credit of the school fund. En. March 12, 1872. **Am'd.** 1905, 627.

§ 1858. **Apportionment of school money by superintendent.** The school superintendent of every county and city and county must apportion all state and county school moneys for the primary and grammar grades of his county or city and county as follows:

1st. **Number of teachers.** He must ascertain the number of teachers each school district is entitled to by calculating one teacher for every district having seventy or a less number of census children and one additional teacher for each additional seventy census children, or fraction of seventy not less than twenty census children, as shown by the next preceding school census; and in cities or districts wherein separate classes are established for the instruction of the deaf, as provided in section sixteen hundred and eighteen of this code, an additional teacher for each nine deaf children, or fraction of such number, not less than five, actually attending such classes; *provided*, that all children in any asylum, and not attending the public schools, of whom the authorities of said asylum are the guardians, shall not be included in making the estimate of the number of teachers to which the district in which the asylum is located is entitled.

2nd. **Same.** He must ascertain the total number of teachers for the county or city and county by adding together the number of teachers so allowed to the several districts. And he must at the time of making his annual report of the school census of his county or city and county, as provided in section 1551 of the Political Code, report to the superintendent of public instruction, under oath, the number of teachers ascertained and so allowed to his county or city and county by the rule or provisions of subdivision first hereof applied to said school census.

3rd. **Amount apportioned.** Five hundred fifty dollars shall be apportioned to every school district for every teacher so allowed to it; *provided*, that to districts having over seventy or a multiple of seventy school census children and a fraction of less than twenty census children, there shall be apportioned twenty-five dollars for each census child in said fraction.

4th. **Same.** All school moneys remaining on hand after apportioning to the school districts the moneys provided for in subdivision three of this section, must be apportioned to the several districts in proportion to the average daily attendance in each district during the preceding school year; *provided*, that for any newly organized school district where school was not maintained during the year in which the school census was taken, the average daily attendance shall be such percentage of the average daily attendance of the old district or districts from which its territory was taken as the census of the new district is of the old and new districts combined. The county superintendent shall deduct from the average daily attendance of the old district or districts the average daily attendance of the new district as above determined. Census children, wherever mentioned in this chapter shall be construed to mean those between the ages of five and seventeen years.

5. **Transfer of funds.** Whenever in any school year, prior to the receipt by the counties, cities, or cities and counties of this state, of their state, county, or city, or high school fund, the school districts or cities or cities and counties shall not have sufficient money to their credit to pay the lawful demands against them, the county, city, or city and county superintendent shall give the treasurer of said county, city or city and county, an estimate of the amount of school money that will next be paid into the county,

city, or city and county treasury, stating the amount to be apportioned to each district. Upon the receipt of such estimate it shall be the duty of the treasurer of said county, city, or city and county, to transfer from any fund not immediately needed to pay the claims against it, to the proper school fund, an amount not to exceed ninety per cent of the amount estimated by the superintendent, and he shall immediately notify the superintendent of the amount so transferred. The funds so transferred to the school fund shall be re-transferred by the treasurer to the fund from which they were taken, from the first money paid into the school fund after the transfer. En. March 12, 1872. **Am'd.** 1873-4, 83; 1873-4, 114; 1880, 44; 1881, 47; 1887, 143; 1889, 194; 1893, 264; 1903, 125; 1905, 57.

Supp. Cal. Rep. Cit. 143, 331.

§ 1861. Supp. Cal. Rep. Cit. 143, 331.

§ 1874*a*: **Text-book committee, secretary to; appointment, term and salary.** The office of secretary to the state text-book committee is hereby created. The state text-book committee shall elect a person of recognized ability and experience to fill said office. Said secretary shall be provided with an office at the state capitol in Sacramento in connection with that of the superintendent of public instruction, and he shall keep the books, accounts, and all records of the said committee and perform such other duties as may from time to time be required of him by said committee. Said secretary shall hold office at the pleasure of the committee and shall receive a salary of twenty-five hundred dollars per year, payable monthly out of the state school book fund and in the same manner as the salaries of state officers are paid. En. Stats. 1905, 786.

§ 1878. Supp. Cal. Rep. Cit. 138, 704.

§ 1883. **School bonds, manner of conducting election for issuance of.** Such election shall be conducted in conformity to the provisions of sections one thousand five hundred and ninety-six, one thousand five hundred and ninety-seven, one thousand five hundred and ninety-eight, one thousand five hundred and ninety-nine, one thousand six hundred, one thousand six hundred and one and one thousand eight hun-

dred and thirty-four, except that the words to appear upon the ballots shall be "Bonds—Yes" and "Bonds—No"; and except further that persons voting at such bond elections shall put a cross (X) upon their ballots, with pencil or ink, after the words "Bonds—Yes" or "Bonds—No" (as the case may be) to indicate whether they have voted for or against the issuance of bonds. En. Stats. 1881, 63. Am'd. 1893, 267; 1905, 190.

TITLE IV.

CHAPTER I.

Chapter repealed and new chapter substituted March 18, 1905. Stats. 1905, 285.

ENROLLED MILITIA.

§ 1895. Who are subject to military duty.
§ 1896. Who are exempt from military duty.
§ 1897. Assessor to enroll persons subject to military duty.
§ 1898. Penalty for dereliction as to enrollment.
§ 1899. Board of equalization to correct the roll.
§ 1900. Duplicate copy forwarded to brigadier-general.
§ 1901. Compensation of assessors.
§ 1902. Muster roll to be made by brigadier-general.
§ 1903. Special enrollment.
§ 1904. Notice of enrollment. Exemption claims.
§ 1905. Examination of assessment rolls and poll lists.
§ 1906. Designation and classification of the militia.
§ 1907. Commander-in-chief.
§ 1908. Staff of commander-in-chief.
§ 1909. Militia, when and by whom it may be called into active service.
§ 1910. Drafts or volunteers from militia.
§ 1911. Persons drafted to rendezvous.
§ 1912. Refusing to rendezvous, penalty for.
§ 1913. Substitutes.
§ 1914. Organization of reserve militia when ordered out.
§ 1915. Organization and command of troops from different commands.

§ 1916. Commission of officers called into active service.
§ 1917. Proclamation of state of insurrection.
§ 1918. Occasions when the Articles of War of the United States are to be in force.
§ 1919. Laws, rules, and regulations of the United States Army; how far applicable generally.
§ 1920. Armed force to obey orders of whom.
§ 1921. Conduct of the troops.
§ 1922. Relief from civil or criminal liability.
§ 1923. The adjutant-general and assistants.
§ 1924. Official bond.

§ 1895. **Who are subject to military duty.** Every able-bodied male citizen of this state, except Mongolians and Indians, between the ages of eighteen and forty-five years, not exempt by law, is subject to military duty. But no alien is obliged to serve or bear arms against the state to which his allegiance is due. En. March 12, 1872. Am'd. 1897, 406. Rep. 1905, 285. En. Stats. 1905, 285.

§ 1896. **Who are exempt from military duty.** The following persons are exempt from military duty and enrollment:

(1) Ministers of religion.
(2) Civil and military officers of the United States.
(3) Officers of foreign governments.
(4) Civil officers of the State of California.
(5) Members of any regularly organized fire or police department in any city, city and county, village or town.
(6) All persons exempted from military duty by the laws of the United States. En. March 12, 1872. Rep. 1905, 285. En. Stats. 1905, 285.

§ 1897. **Assessor to enroll persons subject to military duty.** The county assessor of each county in this state must, at the same time in each year when he prepares a roll containing the taxable inhabitants of his district or county, enroll all the inhabitants thereof subject to military duty, two copies of which roll must be sworn to by him, and delivered to the clerk of the board of supervisors at the same time he delivers the assessment roll. In the city and county of San Francisco the tax collector must perform the duties by this section imposed upon assessors. En. March

12, 1872. **Am'd.** 1897, 406. Rep. 1905, 285. En. Stats. 1905, 285.

§ 1898. **Penalty for dereliction as to enrollment.** If any assessor, or the tax collector of the city and county of San Francisco, neglects or refuses to perform any of the duties required of him by this chapter, he is subject to the same liabilities as are provided by law for a neglect or refusal to perform any of the duties required of him in the assessment of taxes, and, in addition, forfeits not less than three hundred, nor more than one thousand, dollars, to be sued for in the name of the people of the state, by the district attorney for the respective counties and when recovered to be paid into the military fund of the state. If the clerk of the board of equalization neglects or refuses to deliver to the brigadier-general of the brigade to which his county belongs a copy of the military assessment roll, as directed in this chapter, he forfeits not less than three hundred, nor more than five hundred dollars, to be sued for, recovered, and disposed of in the same manner. En. March 12, 1872. **Am'd.** 1897, 406. Rep. 1905, 285. En. Stats. 1905, 285.

§ 1899. **Board of equalization to correct the roll.** The board of equalization must correct the roll at the same time and in the same manner as is prescribed by law for the correction of the assessment roll. En. March 12, 1872. Rep. 1905, 285. En. Stats. 1905, 286.

§ 1900. **Duplicate copy forwarded to brigadier-general.** The clerk of the board of supervisors must deliver to the brigadier-general of the brigade to which his county belongs a copy of such roll, certified by him, within ten days after the board of equalization have completed their corrections. En. March 12, 1872. **Am'd.** 1897, 406. Rep. 1905, 285. En. Stats. 1905, 286.

§ 1901. **Compensation of assessors.** The compensation of assessors for making out the military roll must be determined by the board of supervisors of the several counties, at the rate of five dollars for each one hundred names of persons returned by the assessor as subject to military duty. En. March 12, 1872. Rep. 1905, 285. En. Stats. 1905, 286.

§ 1902. **Muster roll to be made by brigadier-general.** Each brigadier-general must, on the first Monday in October of each year, make from the rolls received by him a muster roll, showing the number of persons within the limits of his command subject to military duty, the original of which, signed by him, must be filed in his office, and a copy thereof transmitted at once to the adjutant-general. En. March 12, 1872. Rep. 1905, 285. En. Stats. 1905, 286.

§ 1903. **Special enrollment.** Whenever the governor shall deem it necessary, he may order an enrollment, to be made by officers designated by him of all persons liable to serve in the militia. Such enrollment shall state the name, residence, age, and occupation of the persons enrolled, and their previous or existing military or naval service. Two copies shall be made thereof, one shall be filed in the office of the clerk of the county or city and county in which the enrollment is made, and the original in the office of the adjutant-general. If the commander-in-chief so directs, such enrollment shall show separately all the seafaring men of whatever calling or occupation, all men engaged in the navigation of the rivers, lakes, and other waters of the state, or in the construction and management of ships and crafts, together with ship owners and their employés, yacht owners, members of yacht clubs, and all other associations for aquatic pursuits. En. Stats. 1903, 286.

§ 1904. **Notice of enrollment. Exemption claims.** The officer making the enrollment provided in preceding section, shall at the time of making the same, serve a notice of such enrollment upon each person enrolled, by delivering such notice to him or leaving it with some person of suitable age and discretion, at his place of residence if known, if not known, then by mailing such notice to his last known place of residence. The return of the enrolling officer filed with the original roll showing such mailing of such notice shall be prima facie evidence of service. All persons claiming exemption must within fifteen days after receiving such notice, make a written statement of such exemption in duplicate, each verified by affidavit and file the same in the office of the county clerk, who shall retain one and forward the other to the adjutant-general within five days after receiving the same. Such affidavit shall be made before any

officer authorized to administer oaths, including commissioned officers of the National Guard, for which such officer shall make no charge. Such clerk shall thereupon submit a list of those he considers exempt according to law to the adjutant-general for his approval and if approved shall mark the word exempt opposite their names; and the remainder of all thus enrolled, not thus found to be exempt shall constitute the militia of the state. The commanding officer of each organization in the National Guard and the heads of the fire or police department in each city, town, city and county, or county shall, whenever an enrollment is ordered, file in the office of such county clerk a certified list of the names of all persons in his command or department. All blank forms required by this section shall be furnished by the adjutant-general. En. Stats. 1905, 286.

§ 1905. Examination of assessment rolls and poll lists. All civil officers in each city, city and county, county or town in this state shall allow persons appointed to make such enrollment, at all proper times, to examine their records and take copies thereof. All persons shall, upon the application of any person making such enrollment, give the name of and all other proper information concerning any person within their knowledge liable to be enrolled, under a penalty of $10.00 for every concealment or false information, or refusal to give the information requested, to be recovered in the name of the people in any court, with costs. En. Stats. 1905, 287.

§ 1906. Designation and classification of the militia. The militia of the state shall be divided into two classes:

(1) The *active* and

(2) The *reserve* militia.

The active militia shall consist of the organized and uniformed military forces of the state, which shall be known as National Guard of California; the reserve militia shall consist of all those liable to serve in the militia, but not serving in the National Guard of California. En. Stats. 1905, 287.

§ 1907. Commander-in-chief. The governor of the state, by virtue of his office, shall be the commander-in-chief of the militia of the State of California, except of such por-

tions as may at times be in the service of the United States. En. Stats. 1905, 287.

§ 1908. **Staff of commander-in-chief.** The staff of the commander-in-chief shall consist of one adjutant-general with the rank of brigadier-general, one assistant adjutant-general, one chief engineer, one judge-advocate-general, one assistant inspector-general (who shall be the officer regularly detailed on duty with the National Guard of California by the secretary of war), one surgeon-general, each with the rank of colonel; one aid-de-camp with the rank of commander, additional aids-de-camp with the rank of lieutenant-colonel, appointed by and holding office at the pleasure of the commander-in-chief, or until their successors are appointed and qualified. En. Stats. 1905, 288.

§ 1909. **Militia, when and by whom it may be called into active service.** In case of war, insurrection, rebellion, invasion, tumult, riot, or imminent danger thereof, or resistance to the laws of this state or the United States; or upon call or requisition of the president of the United States; or upon call of any officer of the United States Army commanding a division, department, or district in California, or any United States marshal in California; or upon call of the chief executive officer of any city or city and county or of any justice of the supreme court or judge of the superior court or of any sheriff setting forth that there is an unlawful or riotous assembly with intent to commit a felony, or to offer violence to person or property, or to resist the laws of the state or United States; or upon call of the sheriff setting forth that the civil power of the county is not sufficient to enable him to execute process delivered to him, the commander-in-chief is authorized to call into active service such portion of the National Guard as may be necessary and if the number available be insufficient he may call into active service such portion of the reserve militia as may be necessary. En. Stats. 1905, 288.

§ 1910. **Drafts or volunteers from militia.** Whenever it shall be necessary to call out any portion of the reserve militia for active duty, the commander-in-chief shall designate a certain officer or officers for each county or city and county in the state who shall forthwith proceed to draft, by lot, as many of the reserve militia in each county or city

and county, or accept as many volunteers as are required by the commander-in-chief, and shall forthwith forward to the adjutant-general a list of the persons so drafted or accepted as volunteers. En. Stats. 1905, 288.

§ 1911. **Persons drafted to rendezvous.** The persons drafted must be summoned by the drafting officer in the manner prescribed by law for the summoning of witnesses in civil cases, the time and place of rendezvous being stated in the summons. En. Stats. 1905, 288.

§ 1912. **Refusing to rendezvous, penalty for.** Every member of the militia ordered out, or who volunteers or is drafted under the provisions of this article, who does not appear at the time and place designated by his commanding officer, or the drafting officer, within twenty-four hours from such time, or who does not produce a sworn certificate of physical disability from a physician in good standing, to so appear, shall be taken to be a deserter and dealt with as prescribed in the Articles of War of the United States. En. March 12, 1872. **Am'd.** 1875-6, 30; 1877-8, 31; 1887, 83; 1889, 429; 1893, 104; 1895, 131; 1897, 407; 1901, 580. Rep. 1905, 258. En. Stats. 1905, 288.

§ 1913. **Substitutes.** Any person called or drafted into service may furnish as a substitute any person fit for military duty, who has not been called or drafted into service. When any person drafted for service offers a suitable substitute, and such substitute consents in writing to subject himself to all the duties, fines, forfeitures, and punishments to which his principal would have been subjected had he personally served, he must be accepted by the officer making such draft. The person whose substitute is so accepted is not subject to draft during the term of the service of the substitute. En. March 12, 1872. **Am'd.** 1877-8, 42; 1897, 407. Rep. 1905, 258. En. Stats. 1905, 289.

§ 1914. **Organization of reserve militia when ordered out.** The portion of reserve militia ordered out or accepted into the service, as indicated in sections 1908 and 1909 of this article, shall be immediately mustered into the service of the state for one year, or such less period as the commander-in-chief may direct, and shall be organized into troops, batteries, or companies, which may be arranged in squadrons,

battalions, or regiments, or assigned to organizations of the National Guard already existing. The commander-in-chief is authorized to appoint the officers necessary to commence or complete any organization thus created. Such new organization shall be equipped, disciplined and governed according to the military regulations of the state. En. March 12, 1872. Rep. 1905, 258. En. Stats. 1905, 289.

§ 1915. **Organization and command of troops from different commands.** Where troops are called into active service from different commands, the commander-in-chief may make such organization of said troops as he may deem proper, and designate the officer or officers to command. En. March 12, 1872. Rep. 1905, 258. En. Stats. 1905, 289.

§ 1916. **Commission of officers called into active service.** The commission of any officer called into active service continues until he is relieved by the order of the governor. Upon the expiration of the commission of any officer called into active service, or upon the occurrence of a vacancy among the commissioned officers in active service, the successor shall be appointed by the governor. En. March 12, 1872. Rep. 1905, 258. En. Stats. 1905, 289.

§ 1917. **Proclamation of state of insurrection.** When the governor is satisfied that the execution of civil or criminal process has been forcibly resisted in any county or city and county, by bodies of men, or that combination to resist the execution of process by force in any county or city and county, or that the civil officers of any county or city and county are unable or have failed for any reason to enforce the laws he may by proclamation declare the county or city and county or any portion thereof to be in a state of insurrection and may order into the service of the state, such number and description of the organized National Guard, or enrolled militia as he deems necessary to serve for such term and under the command of such officer as he may direct. The governor may when he thinks proper revoke the proclamation of insurrection hereby authorized, or declare that it shall cease at the time or in the manner directed by him. En. March 12, 1872. **Am'd.** 1877-8, 31; 1880, 55; 1885, 103; 1891, 122; 1901, 581. Rep. 1905, 258. En. Stats. 1905, 289.

§ 1918. **Occasions when the Articles of War of the United States are to be in force.** Whenever any portion of the militia shall be on duty under or pursuant to the orders of the commander-in-chief, or shall be on duty or ordered to assemble for duty in time of war, insurrection, invasion, public danger, or to aid the civil authorities on account of any breach of peace, tumult, riot, resistance to process of this state, or imminent danger thereof, or for any other cause, the Articles of War governing the Army of the United States, as far as such regulations are consistent with this title and the regulations issued thereunder, shall be in force and regarded as a part of this chapter until said forces shall be relieved from such duty. No punishment under such rules and articles which shall extend to the taking of life shall, in any case be inflicted except in time of actual war, invasion, or insurrection, declared by proclamation of the governor to exist and then only after the approval by the commander-in-chief of the sentence inflicting such punishment. Imprisonment other than in the guard-house shall be executed in jails or in prisons designated by the commander-in-chief for the purpose. En. March 12, 1872. **Am'd.** 1877-8, 31; 1897, 407; 1901, 581. Rep. 1905, 258. En. Stats. 1905, 290.

§ 1919. **Laws, rules, and regulations of the United States Army; how far applicable generally.** The laws, Articles of War, and the rules and regulations for the government of the Army of the United States, so far as the same may be applicable and not inconsistent with the laws of this state, and the rules and regulations prescribed by the governor, constitute the rules and regulations for the government of the National Guard. En. March 12, 1872. **Am'd.** 1895, 81; 1897, 407. Rep. 1905, 258. En. Stats. 1905, 290.

§ 1920. **Armed force to obey orders of whom.** When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, or arresting the offenders, and is placed under the temporary direction of any civil officer, it must obey the orders in relation thereto of such civil officer, provided that the orders of the civil officer shall extend only to a drection of the general or specific object to be accomplished and the duration of the service by the active militia, but the tactical direction of the troops, the kind and extent of force to be used and the particular means to be employed

to accomplish the object specified by the civil officers are left solely to the commanding officer of the active militia on duty. En. March 12, 1872. **Am'd.** 1901, 581. Rep. 1905, 258. En. Stats. 1905, 290.

§ 1921. **Conduct of the troops.** Whenever any portion of the National Guard or enrolled militia shall have been called into active service to suppress an insurrection or rebellion, to disperse a mob, or to enforce the execution of the laws of the state or of the United States, the commanding officer shall use his own discretion with respect to the propriety of attacking or firing upon any mob or unlawful assembly; and his honest and reasonable judgment in the exercise of his duty shall be full protection, civilly and criminally, for any act or acts done while on duty. No officer who has been called out to sustain the civil authorities shall, under any pretense, or in compliance with any order, fire blank cartridges upon any mob or unlawful assemblages under penalty of being cashiered by sentence of a court martial. En. March 12, 1872. **Am'd.** 1877-8, 41. Rep. 1905, 258. En. Stats. 1905, 290.

§ 1922. **Relief from civil or criminal liability.** Members of the militia ordered into active service of the state by any proper authority shall not be liable civilly or criminally, for any act done by them, in line of duty. When a suit or proceeding shall be commenced in any court by any person against any officer of the militia for any act done by such officer in his official capacity in the discharge of any duty under this chapter, or against any person, acting under the authority or order of any such officer or by virtue of any warrant issued by him pursuant to law it shall be the duty of the attorney-general to defend such officer or person and the attorney-general may call upon the district attorney of the county, or city and county in which the action is brought to assist him. En. March 12, 1872. **Am'd.** 1877-8, 32. Rep. 1905, 258. En. Stats. 1905, 291.

§ 1923. **The adjutant-general and assistants.** The adjutant-general shall be in control of the military department of the state, and subordinate only to the governor in matters pertaining to said department. He will perform such duties as are prescribed in this title, or required by the commander-in-chief, and such other duties consistent with the regula-

tions and customs of the United States Army as may be required by the commander-in-chief. He shall be ex-officio chief of staff, quartermaster-general, chief of ordnance, commissary-general, inspector-general, and paymaster-general. All duties of the adjutant-general shall be performed under the direction of the commander-in-chief.

(1) He shall keep a register of all the officers of the militia of the state, and keep in his office all records and papers required to be kept and filed therein, and make a report on or before the 15th day of September in each year to the governor, including a detailed statement of all moneys received and disbursed by him for military purposes during that year and the number and condition of the National Guard.

(2) He shall, at the expense of the state when necessary, cause the military law, the general regulations of the state, and Articles of War of the United States to be printed, indexed, and bound in proper and compact form and distributed to the commissioned officers.

(3) He shall cause to be prepared and issued all necessary blank books, blanks, and notices required to carry into full effect the provisions of the title. All such books and blanks shall be and remain the property of the state.

(4) The seal now used in the office of the adjutant-general shall be the seal of his office, and shall be delivered by him to his successor. All orders issued from his office shall be authenticated with his seal.

(5) The adjutant-general shall have one assistant adjutant-general, appointed and commissioned by the commander-in-chief, as provided, upon the recommendation of the adjutant-general; one chief clerk, three clerks, one stenographer and one armorer. The clerks, stenographer and armorer shall be appointed by the adjutant-general.

(6) In order that the National Guard of the state may receive the benefit of the funds provided by congress, it shall be the duty of the adjutant-general of the state to prepare and submit a plan of proposed field or camp service of instruction for the ensuing year, with an estimate of the funds required for payment, subsistence, and transportation of the portion of the National Guard participating therein; said estimate to furnish the details and to be made out in the form required by instructions from the secretary of war.

(7) He shall make such regulations pertaining to the preparation of reports and returns and to the care and

preservation of property, in possession of the state for military purposes, whether belonging to the state or to the United States, as in his opinion the conditions demand; such regulations to be operative and in force when promulgated in the form of general orders, circulars or letters of instructions.

(8) He shall attend to the care, preservation, and safekeeping, and repairing of the arms, ordnance, accouterments, equipments, and all other military property belonging to the state, or issued to the state by the government of the United States for the purpose of arming and equipping the organized militia. All military property of the state which, after a proper inspection, shall be found unsuitable for the use of the state, shall, under the direction of the governor, be disposed of by the adjutant-general at public auction after suitable advertisement of sale, daily for ten days, in at least one newspaper published in the English language in the city or county where the sale is to take place; or the same may be sold at private sale when so ordered by the governor. He shall bid in the property or suspend the sale whenever, in his opinion, better prices may or should be obtained. He shall, from time to time, render to the governor a just and true account of the sales made by him, and shall expend the proceeds of the same in the purchase of other military property, as the governor may direct.

He shall be responsible for all the arms, ordnance, accouterments, equipments, and other military property which may be issued to the state by the secretary of war in compliance with law; and it shall thereafter be his duty to prepare returns of said arms and other property of the United States at the times and in the manner requested by the secretary of war.

He shall, upon the order of the governor turn in to the ordnance department of the United States Army the rifles, carbines, bayonets, bayonet scabbards, gun slings, belts, and such other necessary accouterments and equipments, the property of the United States and now in possession of the state, which may be replaced, from time to time, by new arms, equipments, etc., sent by the United States in substitution therefor, and cause the same to be shipped, under instructions from the secretary of war, to the designated arsenal or depot at the expense of the United States. And when the National Guard of the state shall be fully armed and equipped with standard service magazine arms and the

standard equipment and accouterment of the United States Army, he shall cause all the remaining arms, equipments, etc., the property of the United States and in possession of the state, to be transferred and shipped as above directed.

(9) He shall keep a just and true account of all expenses necessarily incurred, including pay of officers and enlisted men, subsistence of militia, transportation of the militia, and of all military property of the state, and such expenses shall be audited and paid in the same manner as other military accounts are audited and paid.

(10) He shall issue such military property as the governor shall direct, and under his direction make purchases for that purpose. No military property shall be issued to persons or organizations other than those belonging to the active militia, except to such portions of the reserve militia as may be called out by the governor.

Purchases of property not exceeding $100 in value shall be made in such manner as the adjutant-general shall direct. If such purchase requires an expenditure exceeding $100 and not exceeding $500, the adjutant-general shall procure written proposals to furnish such property from at least two parties and shall purchase such property from the lowest responsible bidder.

If such purchase shall require the expenditure of a sum exceeding $500, he shall publicly advertise, for not less than ten days, for sealed proposals for furnishing such property; such proposals shall be publicly opened by the adjutant-general at the place, day and hour designated in such advertisement.

The adjutant-general shall, if the governor approve, make contract with the lowest responsible bidder to furnish such property. All proposals and contracts made under the authority hereby conferred shall be filed in the office of the adjutant-general. The adjutant-general is authorized and directed, whenever, in his opinion, it shall be to the interest of the state, to require a party who shall agree or contract to furnish such property to give bond to the people of this state in such sum and with such surety as he shall direct, conditioned for the faithful performance of such agreement or contract. In case of default such bond shall be prosecuted by the attorney-general and all moneys recovered shall be applied by the adjutant-general to the benefit of the National Guard.

All property purchased under the authority hereby granted shall be inspected by an inspector or an officer detailed for the purpose by the governor, and no payment shall be made therefor until it shall appear by the certificate of such officer that such property is of the kind and quality specified in such agreement or contract.

In case of insurrection, invasion, tumult, riot, breaches of the peace or imminent danger thereof, the governor may temporarily suspend the operation of this paragraph and direct the adjutant-general to purchase such military property as may be required in open market. He shall report such action, with the reasons therefor, and a statement of the property purchased and the prices paid therefor, to the legislature at its next session.

(11) He shall render annually in his report to the governor a statement in detail showing the disposition and condition of all clothing, ordnance, arms, ammunition, and other military property on hand or issued.

(12) He shall attest all commissions issued to military officers.

(13) He will superintend the preparation of all returns and reports required by the United States from the state.

(14) In the absence of the adjutant-general, the assistant adjutant-general shall perform the duties set forth in this title. En. March 12, 1872. Rep. 1887, 87. En. Stats. 1893, 108. **Am'd.** 1895, 182. Rep. 1905, 258. En. Stats. 1905, 291.

§ 1924. **Official bond.** The adjutant-general must execute an official bond in the sum of ten thousand ($10,000.00) dollars. En. March 12, 1872. **Am'd.** 1897, 407. Rep. 1905, 258. En. Stats. 1905, 294.

TITLE IV.

CHAPTER II.

Chapter repealed and new chapter substituted. March 18, 1905. Stats. 1905, 258.

THE NATIONAL GUARD.

Article I. Composition and strength, §§ 1925-1935.
II. Commissioned officers, §§ 1951-1968.
III. Enlisted men, §§ 1980-1986.
IV. Service of National Guard, §§ 2003-2014.
V. Military courts, §§ 2018-2028.
VI. Arms, uniform and equipment, §§ 2039-2046.
VII. Pay and allowance, §§ 2076-2086.
VIII. Privileges, prohibitions, etc., §§ 2093-2106.
IX. Naval militia, §§ 2111, 2112.

ARTICLE I.

COMPOSITION AND STRENGTH.

§ 1925. Composition and strength.
§ 1926. Brigades.
§ 1927. Authority of commander-in-chief.
§ 1928. Staff of brigadier-general.
§ 1929. Medical department.
§ 1930. Company of engineers.
§ 1931. Signal corps.
§ 1932. Coast artillery.
§ 1933. Cavalry.
§ 1934. Infantry.
§ 1935. Field music.
§§ 1936-1946. Repealed.

§ 1925. Composition and strength. The National Guard of California shall consist of one company of engineers, two companies of signal men, not less than four companies of coast artillery, four troops of cavalry, not to exceed sixty

companies of infantry, the medical department, not to exceed seven divisions of the naval militia, the officers of the staff of the commander-in-chief, officers on the retired list, and such officers and enlisted men as are authorized by law. The total number of companies of all arms of the service shall not exceed seventy-eight. En. March 12, 1872. **Am'd.** 1877-8, 32. Rep. 1905, 258. En. Stats. 1905, 259.

§ 1926. **Brigades.** Such portion of the National Guard as the commander-in-chief may designate shall be organized into two brigades, each commanded by a brigadier-general. En. March 12, 1872. **Am'd.** 1877-8, 32. Rep. 1905, 258. En. Stats. 1905, 259.

§ 1927. **Authority of commander-in-chief.** The commander-in-chief shall have power to fix the limits of each brigade, to assign troops thereto, to provide for the location and organization of companies to fill any vacancies that may occur; to transfer, attach, consolidate, or disband companies; to organize and reorganize battalions, squadrons, and regiments. He shall have power to designate the number of noncommissioned officers and privates that shall constitute the companies of the various arms of the service, conforming as nearly as possible to the organization of like companies of the Regular Army; *provided*, that he shall not organize a company consisting of less than fifty enlisted men. When changes in the organization of companies or in the number of noncommissioned officers or privates shall be made in the Regular Army, the commander-in-chief will cause like changes to be made in the organization of the National Guard. The authority above given also applies to the hospital corps, bands, and all other enlisted men of the National Guard. En. March 12, 1872. **Am'd.** 1877-8, 32. Rep. 1905, 258. En. Stats. 1905, 259.

§ 1928. **Staff of brigadier-general.** The staff of a brigadier-general shall consist of one assistant adjutant-general, with the rank of lieutenant-colonel; one brigade inspector (who shall act as inspector of small arms practice), one quartermaster (who shall act as paymaster), one commissary, one judge-advocate, each with the rank of major; one surgeon, with the rank of lieutenant-colonel; and two aids, with the rank of first lieutenant. En. March 12, 1872. **Am'd.** 1877-8, 32. Rep. 1905, 258. En. Stats. 1905, 259.

§ 1929. **Medical department.** The medical department shall consist of one surgeon-general, with the rank of colonel on the staff of the commander-in-chief; two surgeons, with the rank of lieutenant-colonel on the staff of the brigadier-generals; five surgeons, with the rank of major; and twenty assistant surgeons, with the rank of first lieutenant, who shall be promoted to captains after five years' service. The assignments of medical officers to duty shall be made by the commander-in-chief, upon the recommendation of the surgeon-general. The number of sergeants, first class; sergeants, corporals, privates, first class; and privates of the hospital corps, shall be designated by the commander-in-chief, but shall not exceed such a number as may be required to make the proper details to the various organizations, as prescribed by the United States Army regulations, manuals, or orders; *provided*, that in emergencies, or when there is great necessity therefor, the commander-in-chief may authorize the enlistment of not to exceed one hundred additional men for the purpose of the temporary organization of an ambulance company or of a field hospital, or both, and such other detachments as the necessities of the service may require. Details of enlisted men of the hospital corps shall be made by the surgeon-general. En. March 12, 1872. **Am'd.** 1885, 103; 1887, 83; 1895, 182. Rep. 1905, 258. En. Stats. 1905, 259.

§ 1930. **Company of engineers.** A company of engineers shall consist of one captain, one first lieutenant, one second lieutenant, and not less than fifty enlisted men. En. March 12, 1872. **Am'd.** 1877-8, 32. Rep. 1905, 258. En. Stats. 1905, 260.

§ 1931. **Signal corps.** Each company of signal men shall consist of one captain, one first lieutenant, one second lieutenant, and not to exceed fifty enlisted men. En. March 22, 1872. Rep. 1905, 258. En. Stats. 1905, 260.

§ 1932. **Coast artillery.** The four companies of coast artillery shall be organized into a battalion, with the following designated officers and noncommissioned officers: One major, three extra first lieutenants, to be available for detail as battalion adjutant, battalion quartermaster, and battalion commissary, and such other details as may be authorized by law and regulations; one battalion sergeant

major, one quartermaster sergeant, one commissary sergeant, one electrician sergeant, two color sergeants, and each company shall have the following officers: One captain, one first lieutenant, and one second lieutenant. En. March 12, 1872. **Am'd.** 1877-8, 33; 1895, 182. Rep. 1905, 258. En. Stats. 1905, 260.

§ 1933. **Cavalry.** The four troops of cavalry shall be organized into a squadron, with the following designated officers and noncommissioned officers: One major, three extra first lieutenants, to be available for detail as squadron adjutant, squadron quartermaster, and squadron commissary, and such other details as may be authorized by law and regulations; one veterinarian (veterinary surgeon), one squadron sergeant major, one squadron quartermaster sergeant, one squadron commissary sergeant, and two color sergeants. Each troop of cavalry shall have the following officers: One captain, one first lieutenant, and one second lieutenant. En. March 12, 1872. Rep. 1905, 258. En. Stats. 1905, 260.

§ 1934. **Infantry.** Each regiment of infantry shall consist of one colonel, one lieutenant-colonel, three majors; three extra captains, who shall be available for detail as regimental adjutant, regimental quartermaster, and regimental commissary; three extra first lieutenants, who shall be available for detail as battalion adjutants; three extra second lieutenants, who shall be available for detail as battalion quartermasters and commissaries; one chaplain, with the rank of captain; one sergeant major, one quartermaster sergeant, one commissary sergeant, three battalion sergeants major, two color sergeants, one band, and not less than nine nor more than twelve companies, organized into three battalions. Each company of infantry shall have the following officers: One captain, one first lieutenant, and one second lieutenant. En. March 12, 1872. **Am'd.** 1880, 51. Rep. 1905, 258. En. Stats. 1905, 260.

§ 1935. **Field music.** Upon the application of the commanding officer of a regiment, or of a battalion not part of a regiment, or squadron, the commander-in-chief may authorize the formation of the musicians of such organization into a separate body, to be known as "field music," to consist of the present enlisted musicians and such others as may hereafter be enlisted in or transferred to it as musicians.

In regiments and battalions composed of companies, troops and battalions of different location, field musicians may be allowed on the basis of two to each company, to be enlisted by the direction of the commanding officer of and attached to the headquarters of such regiment or battalion. When such regiment or battalion is assembled for duty, the musicians allowed to the companies composing it shall be assigned to duty as part of the field music. The commanding officer of an organization of which field music is a part may appoint and warrant from its members one quartermaster sergeant, one sergeant, and one corporal. En. March 12, 1872. **Am'd.** 1873-4, 36. Rep. 1905, 258. En. Stats. 1905, 261.

§ 1936. En. March 12, 1872. **Am'd.** 1873-4, 36; 1877-8, 33; 1880, 51; 1897, 408; 1901, 581. Rep. 1905, 258.

§ 1937. En. March 12, 1872. **Am'd.** 1877-8, 43. Rep. 1905, 258.

§ 1938. En. March 12, 1872. **Am'd.** 1877-8, 33. Rep. 1905, 258.

§ 1939. En. March 12, 1872. **Am'd.** 1901, 583. Rep. 1905, 258.

§ 1940. En. March 12, 1872. Rep. 1905, 258.

§ 1941. En. Stats. 1877-8, 43. **Am'd.** 1880, 51; 1881, 30. Rep. 1905, 258.

§ 1942. En. Stats. 1877-8, 40. **Am'd.** 1880, 55; 1893, 104; 1895, 183. Rep. 1905, 258.

§ 1943. En. Stats. 1877-8, 41. Rep. 1905, 258.

§ 1944. En. Stats. 1877-8, 41. Rep. 1905, 258.

§ 1945. En. Stats. 1893, 109. **Am'd.** 1897, 408. Rep. 1905, 258.

§ 1946. En Stats. 1897, 408. **Am'd.** 1901, 583. Rep. 1905, 258.

ARTICLE II.

COMMISSIONED OFFICERS.

§ 1951. Commissions.
§ 1952. Rank of officers.
§ 1953. Eligibility required to receive a commission.
§ 1954. Examination.
§ 1955. Examining boards.
§ 1956. Elected officers.
§ 1957. Appointed officers.
§ 1958. Elections.
§ 1959. Appeal from an election.
§ 1960. Oath of office.
§ 1961. Resignations, how made.
§ 1962. Effect of line officers accepting commissions on staff.
§ 1963. Retired list.
§ 1964. Examination and discharge of officers.
§ 1965. Absence or removal; when deemed resignation.
§ 1966. Officers re-elected not to be re-commissioned. When new commissions may be issued.
§ 1967. Dishonorable discharge bar to re-entry and holding office.
§ 1968. Brevet commissions.
§§ 1969-1977. Repealed.

§ 1951. **Commissions.** All officers shall be commissioned by the commander-in-chief, but he may refuse to issue a commission to any person elected or appointed if the person elected or appointed be in any way unqualified or unworthy to be an officer in the National Guard; but no one shall be commissioned unless the conditions set forth in sections 1953 and 1954 of this chapter have been complied with, and no one shall be recognized as an officer unless he shall have been duly commissioned and shall have taken the oath of office and qualified. En. March 12, 1872. Rep. 1905, 258. En. Stats. 1905, 261.

§ 1952. **Rank of officers.** All officers of the National Guard must take rank according to the date assigned them by their commissions, which date shall be that of their election or appointment; and when two of the same grade are

of the same date, their rank must be determined, first, by the length of previous service as an officer in the National Guard; second, by the length of previous military service in the National Guard; third, by lot. Officers of the National Guard are in all cases of superior rank to officers of the enrolled militia of the same grade, irrespective of the dates of their commissions. En. March 12, 1872. Rep. 1905, 258. En. Stats. 1905, 261.

§ 1953. **Eligibility required to receive a commission.** Commissioned officers must be citizens of the United States, of the age of eighteen years and upwards. No person who has been expelled or dishonorably discharged from any military or naval organization of the United States, this state, or any other state in the union, shall be commissioned in the National Guard of California. No person shall be commissioned unless he shall possess the additional requirements herein prescribed for the particular office to which he is to be commissioned. A brigadier-general at the time of his appointment shall have served at least four years as an officer in the National Guard of California, or in the United States military service, or both, two years of which shall have been as a company officer, or as a field officer, or both. A field officer at the time of his election shall have served as a company officer at least two years in the National Guard of California, or in the United States military service, or both, and shall have qualified for such election or examination, as provided in section 1954. All surgeons and assistant surgeons of the National Guard shall be regularly graduated, licensed, and practicing physicians or surgeons, qualified to practice their profession in California. All judge-advocates of the National Guard shall be members of the bar of the supreme court of the State of California. All engineer officers of the National Guard shall be civil engineers. All chaplains shall be regularly ordained ministers. En. March 12, 1872. Rep. 1905, 258. En. Stats. 1905, 262.

§ 1954. **Examination.** Before receiving a commission consequent upon an original appointment or election, or upon reappointment or re-election, or before being commissioned to a higher grade as a result of promotion, every officer must have passed a satisfactory physical examination before any surgeon of the National Guard, and a satisfactory examination before a board of commissioned officers as to

his knowledge of military affairs and general knowledge and fitness for the service, and any one failing to pass such examinations shall not be eligible for an office in the militia of this state or for promotion for a period of one year after the date of such failure. General officers, officers on the staff of the commander-in-chief, judge-advocates, medical officers, and chaplains are exempt from examination. En. March 12, 1872. Rep. 1905, 258. En. Stats. 1905, 262.

§ 1955. **Examining boards.** Boards of examination under the preceding section shall consist of three officers, two of which shall be line officers, and shall be from organizations in the immediate vicinity in which the board is to sit, to be detailed to sit at San Francisco, Sacramento, and Los Angeles, and shall be detailed by the commander-in-chief. Such boards shall have the same power to take evidence, administer oaths, and compel witnesses to attend and testify and produce books and papers, and punish their failure to do so, as is possessed by a general court-martial. When returns of appointments or proceedings of election are received by a board, the persons appointed or elected shall by it be ordered before it within twenty days for examination. The board shall thoroughly examine the candidate for a commission as to his military and general qualifications and under such regulations as the commander-in-chief may prescribe; and, if in the opinion of the majority of the board, he is duly qualified, the fact shall be duly certified to the commander-in-chief. En. March 12, 1872. **Am'd.** 1880, 51. Rep. 1905, 258. En. Stats. 1905, 262.

§ 1956. **Elected officers.** Field officers of a regiment or battalion shall be elected by the field and company officers thereof, and they shall hold office for the term of four years. All company and troop officers shall be elected by the members of such organizations. Captains of such organizations shall hold office for four years, lieutenants shall hold office for three years. En. March 12, 1872. Rep. 1905, 258. En. Stats. 1905, 263.

§ 1957. **Appointed officers.** The brigadier-generals of the National Guard shall be appointed by the commander-in-chief, by and with the advice and consent of the senate. During the time the senate is not in session the commander-in-chief may make such appointments subject to subsequent

confirmation by the senate. The officers of the staff of a brigadier-general, the officers allowed to regiments, battalions and squadrons for staff duty, surgeons of brigades and surgeons and assistant surgeons of regiments, and of battalions and squadrons not part of regiments, assistant surgeons of separate troops or companies, and chaplains shall be appointed by the commander-in-chief, upon the recommendation of their immediate commanding officers, and shall hold office during the pleasure of their immediate commanding officer or until their successors are appointed and qualified. When the commander-in-chief creates new organizations, he shall have the power, in the first instance, to appoint all the officers necessary to commence and complete such organizations, such officers to hold office for the term of one year. En. March 12, 1872. **Am'd.** 1891, 122. Rep. 1905, 258. En. Stats. 1905, 263.

§ 1958. **Elections.** Two months previous to the expiration of the term of service of any officer, or upon a vacancy occurring among the officers of any organization attached to a brigade, the brigade commander must order an election therefor and designate an officer to preside thereat, who must give ten days' notice of his appointment, of the time and place of holding the election, and of the office to be filled, which notice shall be issued and promulgated as orders usually are in the command. Such presiding officer must make return in duplicate of the election held, to the commanding general of the brigade, who shall forward one copy of said election return to the proper examining board and shall retain the other copy at his headquarters. Upon receiving notice from the examining board that the officer or officers-elect have passed a successful examination, which notice shall be endorsed upon the return of election sent to said board, he shall forward the same through regular military channels for approval to the adjutant-general, who, upon finding the same in accordance with the provisions of law, orders, and regulations, must notify the commander-in-chief thereof for his consideration, who, if he approves, shall issue the commission. In all elections for commissioned officers a majority of the votes of those present (a majority of those entitled to vote being present) shall be necessary to a choice. Should there be no choice, the presiding officer shall adjourn the meeting to a time not to exceed fifteen days, and at that meeting conduct another election; and,

if such second meeting result in no choice, the commander-in-chief shall be notified and may then fill the vacancy by appointment. If the officer elected or re-elected, and duly notified, does not appear before said examining board when summoned by them, he shall be deemed to have declined his commission, and there shall be another election ordered. The filing of a proper certificate of said board with the officer ordering the election, that the officer elected or appointed has failed to pass an examination, or declined to appear before the board when notified, shall be deemed sufficient for ordering a new election. When vacancies occur at an election through the promotion of any officer, such vacancies may then and there be filled without further order. The commander-in-chief will issue like orders to fill like vacancies in unattached organizations. The officer designated to preside thereat must make duplicate returns to the adjutant-general, and the commander-in-chief must designate the board to examine the officer or officers elected. En. March 12, 1872. Rep. 1905, 258. En. Stats. 1905, 263.

§ 1959. **Appeal from an election.** Every person deeming himself aggrieved by the proceedings at an election may appeal to the commander-in-chief by filing at the time of the election, with the presiding officer thereat, notice of such intended appeal, and forwarding to such presiding officer a full statement of the grounds of such appeal within ten days from date on which the election took place, who shall forward the same through channels, together with the other returns of said election, to the commander-in-chief. The commander-in-chief may direct, upon such appeal, an officer to take testimony in the case and to report his findings, and such officer shall have the same power to take evidence, administer oaths, issue subpoenas, and compel witnesses to attend and testify and produce books and papers, and punish their failure to do so, as is possessed by a general court-martial. En. March 12, 1872. **Am'd.** 1891, 122; 1893, 104. Rep. 1905, 258. En. Stats. 1905, 264.

§ 1960. **Oath of office.** Every officer duly commissioned shall, within ten days after his commission is tendered to him, or within ten days after he shall have been notified personally or by mail that the same is held in readiness for him by a superior officer, take and subscribe the oath prescribed in section 1982 of this chapter. In case of neglect

or refusal to take and subscribe such oath within the time mentioned, such commission shall be canceled by the commander-in-chief and a new appointment shall be made or a new election shall be ordered to fill the vacancy. En. March 12, 1872. **Am'd.** 1880, 51. Rep. 1905, 258. En. Stats. 1905, 264.

§ 1961. **Resignations, how made.** Any officer resigning his commission must do so in writing, addressing the adjutant-general, giving his reasons for so resigning, and forward the same through intermediate commanders, who will make their indorsement thereon; and the resignation takes effect when accepted by the commander-in-chief and announced in orders. En. March 12, 1872. Rep. 1905, 258. En. Stats. 1905, 265.

§ 1962. **Effect of line officers accepting commissions on staff.** Any officer of a regiment, battalion, or company accepting any staff appointment, is held to have resigned the commission held by him at the time of said appointment. En. March 12, 1872. **Am'd.** 1877-8, 33; 1877-8, 42; 1880, 56; 1881, 30; 1885, 104; 1889, 429; 1895, 183; 1897, 408; 1901, 583. Rep. 1905, 258. En. Stats. 1905, 265.

§ 1963. **Retired list.** (1) Any commissioned officer who has become disabled from longer performing the active duties of his office, may, upon his own application, be placed upon the retired list; *provided*, that such disability shall have been incurred while in the performance of duty.

(2) If an officer for the above reason desires to be placed upon the retired list, he shall make application to the commander-in-chief to appoint a board of surgeons, who shall examine him as to his disability, and if such disability has not been incurred by reason of any dereliction, they shall, if they deem proper, recommend that his application be granted; and upon approval of such application by the commander-in-chief, the adjutant-general shall issue orders retiring such officer.

(3) Any commissioned officer who shall have served as such in the National Guard of this state for a period of eight years, may, upon his own application, be placed upon the retired list and withdrawn from active service and command with the rank held by him at the time such application is made. And any commissioned officer who shall have

at any time heretofore served as such in the militia or National Guard of this state for a period of eight years, shall, upon his own application and due proof of such service, be placed upon the retired list with the rank held by him at the time of the expiration of his commission. Upon applications as above provided being duly made and approved, the commander-in-chief shall cause orders to be issued retiring the officer who makes application therefor, in accordance with the provisions of this section; *provided, however,* that nothing herein contained shall be construed to permit the placing upon the retired list of any officer who shall have been dishonorably dismissed from the service.

(4) The officers on the retired list shall only be subject to detail for duty by orders from the commander-in-chief; and he shall cause to be issued such orders as he may deem necessary, detailing them for duty upon boards of officers for military purposes, courts-martial, and courts of inquiry, and for such other military duties as, in his judgment, may be advisable. When, however, officers on the retired list are detailed for active duty other than upon boards of officers, courts-martial, and courts of inquiry, they shall only be entitled to pay of the rank which properly belongs to the office, the duties of which they are detailed to perform. When the duty ends, or the detail is canceled, the officer shall again return to the retired list with his former retired rank. A roster of all officers on the retired list shall be kept in the adjutant-general's office.

(5) Officers on the retired list may return to the active list by appointment or election, and when such term of appointment or election shall cease, may, upon application, be returned to the retired list with the rank previously held by them on said retired list.

(6) Officers on the retired list shall, on all occasions of duty, and all occasions of ceremony, take rank next to officers of like rank upon the active list. En. March 12, 1872. Rep. 1905, 258. En. Stats. 1905, 265.

§ 1964. **Examination and discharge of officers.** The commander-in-chief, whenever he may deem that the good of the service requires it, or upon the request of a brigade commander, may order any commissioned officer before a board of examination, to consist of not less than three nor more than five officers, above the rank of captain, which is hereby invested with the powers of courts of inquiry and courts-

martial, and such board shall examine into the moral character, capacity, and general fitness for the service of such commissioned officer, and record and return the testimony taken and a record of its proceedings. If the findings of such board be unfavorable to such officer and be approved by the commander-in-chief, he shall be dismissed from the service. No officer whose grade or promotion would in any way be affected by the decision of such board, in any case that may come before it, shall participate in the examination or decision of the board in such case. Failure to appear when ordered before a board constituted under this section shall be sufficient ground for a finding by such board that the officer ordered to appear be discharged. En. March 12, 1872. Rep. 1905, 258. En. Stats. 1905, 266.

§ 1965. Absence or removal; when deemed resignation. Any commissioned officer who absents himself from the state for more than thirty days, without the permission of the commander-in-chief, is deemed to have resigned, and such resignation shall be announced in orders from the adjutant-general's office immediately after the fact of such absence becomes officially known. En. March 12, 1872. **Am'd.** 1880, 57; 1897, 410. Rep. 1905, 258. En. Stats. 1905, 266.

§ 1966. Officers re-elected not to be re-commissioned. When new commissions may be issued. When an officer is re-elected, no new commission issues; but a certificate of such election must be issued to him by the adjutant-general. In the event of a commission being lost or destroyed, on satisfactory proof being given of the same, the commander-in-chief shall issue a new commission, with rank from date given in former commission. En. March 12, 1872. **Am'd.** 1897, 410. Rep. 1905, 258. En. Stats. 1905, 266.

§ 1967. Dishonorable discharge bar to re-entry and to holding office. No dishonorably discharged officer of the National Guard of California shall be permitted to hold any office of trust or emolument, or be permitted to again enter any company of the National Guard, or to be commissioned in the National Guard, except the offense be pardoned by the commander-in-chief. En. March 12, 1872. Rep. 1905, 258. En. Stats. 1905, 267.

§ 1968. **Brevet commissions.** The commander-in-chief may, upon the recommendation of their commanding officers, confer brevet commissions of a grade next higher than the ordinary or brevet commissions ever held by them, upon officers of the National Guard in active service for gallant conduct. Such commissions shall carry with them only such privileges or rights as are allowed in like cases in the military and naval service of the United States. En. March 12, 1872. **Am'd.** 1877-8, 34. Rep. 1905, 258. En. Stats. 1905, 267.

§ 1969. En. March 12, 1872. **Am'd.** 1877-8, 43. Rep. 1905, 258.

§ 1970. En. March 12, 1872. **Am'd.** 1877-8, 34; 1880, 56; 1891, 122; 1895, 184; 1897, 411. Rep. 1905, 258.

§ 1971. En. March 12, 1872. Rep. 1905, 258.

§ 1972. En. March 12, 1872. Rep. 1905, 258.

§ 1973. En. Stats. 1877-8, 34. **Am'd.** 1880, 51; 1881, 31; 1891, 123; 1893, 104; 1897, 411. Rep. 1905, 258.

§ 1973*a*. En. Stats. 1901, 585. Rep. 1905, 258.

§ 1974. En. Stats. 1877-8, 34. **Am'd.** 1880, 52; 1885, 104; 1897, 412. Rep. 1905, 258.

§ 1975. En. Stats. 1877-8, 35; 1877-8, 44. Rep. 1880, 53. **Am'd.** 1880, 53. Rep. 1905, 258.

§ 1976. En. Stats. 1877-8, 45. **Am'd.** 1897, 412. Rep. 1905, 258.

§ 1977. En. Stats. 1880, 53. Rep. 1905, 258.

ARTICLE III.

ENLISTED MEN.

§ 1980. Eligibility to membership.
§ 1981. Application for membership.
§ 1982. Oath of officers and members.
§ 1983. Transfers.
§ 1984. Noncommissioned officers.
§ 1985. Discharges; when and by whom granted.
§ 1986. Dishonorable discharge bar to re-entry and to holding office.
§§ 1991, 1993. Repealed.

§ 1980. Eligibility to membership. Any male who is a citizen of the United States or has declared his intention to become a citizen, of more than eighteen and less than forty-five years of age, able-bodied, free from disease, of good character and temperate habits, may be enlisted in the National Guard of this state, under the restrictions of this article, for a term of not less than three years; *provided*, that any man having served one enlistment satisfactory may re-enlist for one, two or three years at his option; *and provided further*, that boys may be enlisted as musicians, if more than sixteen years of age. No minor shall be enlisted without the written consent of his parent or guardian. A man who has been expelled or dishonorably discharged from any military organization of the state or the United States shall not be eligible for enlistment or re-enlistment unless he produce the written consent to such enlistment of the commanding officer of the organization from which he was expelled or dishonorably discharged. Men who have been discharged by reason of disbandment may be enlisted and shall then receive credit for the period served at the time of such disbandment. Bandmasters, drum majors, chief trumpeters, veterinary sergeants, members of the hospital corps, and musicians may be enlisted as such. En. Stats. 1889, 432. **Am'd.** 1891, 123; 1895, 184; 1897, 412. **Rep.** 1905, 258. En. Stats. 1905, 267.

§ 1981. **Application for membership.** Application or propositions for membership in any troop, company, organized corps, or naval division of the National Guard shall be made only at a regular weekly meeting or assemblage of such organization; and the names of such applicants shall be posted in a conspicuous place in its headquarters or armory, until the next succeeding regular weekly meeting or assemblage of such organization, at which time, and not before, such applicant may be balloted for. En. Stats. 1893, 109. **Am'd.** 1897, 413. Rep. 1901, 586. En. Stats. 1905, 267.

§ 1982. **Oath of officers and members.** All officers and enlisted men of the National Guard, on becoming members and before performing duty and at each subsequent re-enlistment, must take and subscribe the following oath, which all commissioned officers thereof are authorized to administer: "I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of California, and will maintain and defend the laws and all officers employed in administering the same." Which oath, certified by the officer administering the same, must be forwarded to the adjutant-general and be preserved with the rolls of companies. Oaths of re-enlistment shall show on the margin the number of the enlistment. En. March 12, 1872. **Am'd.** 1880, 53; 1893, 105; 1897, 413; 1901, 586. Rep. 1905, 258. En. Stats. 1905, 268.

§ 1983. **Transfers.** Enlisted men may be transferred upon their own application in the same regiment, battalion or squadron not part of a regiment, from one company or troop to another, by the commanding officer of such regiment, battalion or squadron; from one regiment, battalion or squadron not part of a regiment, signal corps, unattached troop or company, to another in a brigade, by the commanding general of that brigade; from an organization in one brigade to an organization in another brigade, by the commander-in-chief. Noncommissioned officers must be reduced to the grade of private before they can be transferred. No transfer shall be made except upon the approval of the commanding officers of the organizations affected. En. March 12, 1872. **Am'd.** 1895, 185. Rep. 1901, 586. En. Stats. 1905, 268.

§ 1984. Noncommissioned officers. Commanding officers of regiments and of battalions and squadrons not part of regiments shall appoint and warrant the noncommissioned officers of their respective regiments, battalions, or squadrons, and they shall in their discretion warrant the noncommissioned officers of the troops and companies of their respective regiments, battalions, and squadrons from the members thereof, upon the written nomination of the commanding officers of the troops and companies, respectively. In troops and companies not part of a regiment, battalion, or squadron, but attached to a brigade, the noncommissioned officers shall be warranted by the brigade commander, in his discretion, from the members thereof, upon the written nomination of the commanding officer of such troop or company. In troops, companies, and corps not attached to a brigade, regiment, battalion, or squadron, the noncommissioned officers shall be warranted by the adjutant-general, in his discretion, from the members thereof, upon the written nomination of the commanding officer of such troop, company, or corps. The officer warranting a noncommissioned officer shall have power to reduce to the ranks, for good and sufficient reasons, the noncommissioned officers warranted in accordance with this section; but such as were enlisted as noncommissioned officers shall be discharged. En. March 12, 1872. Am'd. 1877-8, 35; 1893, 106; 1895, 185; 1897, 413; 1901, 586. Rep. 1905, 258. En. Stats. 905, 268.

§ 1985. Discharges; when and by whom granted. Any enlisted man may be honorably discharged before the expiration of his term of service by order of the commanding officer of the regiment or unattached battalion, or, if a member of an unattached company, troop, or battery, by the brigade commander or the commander-in-chief, upon the recommendation of his commanding officer, for any of the following reasons: To accept promotion by commission; upon removal of residence from the state, or out of the bounds of the command to which he belongs to so great a distance that, in the opinion of the commanding officer, he cannot properly perform his military duty; and upon disability, established by certificate of a medical officer; any enlisted man may also be discharged by the commanding officer of the regiment or unattached battalion; or, if a member of an unattached company, troop, or battery, by the brigade com-

mander or the commander-in-chief; whenever the commanding officer of a company shall approve the application of two thirds of the members of the company requesting the discharge of an enlisted man thereof, and if, at a regular meeting of a company, or at a meeting called for that purpose, two thirds of the members of the company desire by vote the discharge of one of their members, an application for the discharge of such soldier shall be made by the commanding officer thereof. Or he may be dishonorably discharged for either of the following reasons: Upon conviction of felony in a civil court; for neglecting or refusing to pay any fine imposed by any military court within thirty days after it was imposed; by sentence of a court-martial. A character shall be attached to all written discharges, and a written discharge specifying character shall be furnished all who are honorably discharged. Every member of the National Guard dishonorably discharged from the military service of the State of California shall be disfranchised for the period of one year next ensuing such discharge, in addition to penalties provided in section 1967. The discharges herein provided for shall be made by the commanding officer of the regiment or unattached battalion, and in the case of members of unattached companies, troops, or batteries, by the commanding general of the brigade of which said unattached organization is a part, or by the adjutant-general. En. March 12, 1872. **Am'd.** 1877-8, 35; 1895, 185; 1901, 587. Rep. 1905, 258. En. Stats. 1905, 269.

§ 1986. **Dishonorable discharge bar to re-entry and to holding office.** No enlisted man dishonorably discharged from the National Guard shall be permitted to again enter any company of the National Guard, or to be commissioned in the National Guard, except the offense is pardoned by the commander-in-chief. En. March 12, 1872. **Am'd.** 1880, 53; 1897, 414. Rep. 1905, 258. En. Stats. 1905, 269.

§ 1991. En. March 12, 1872. Rep. 1880, 55. En. Stats. 1895, 186. Rep. 1905, 258.

§ 1993. En. March 12, 1872. Rep. 1905, 258.

ARTICLE IV.

SERVICE OF NATIONAL GUARD.

§ 2003. Drills and parades.
§ 2004. Companies parading with less than thirty-two members may be disbanded.
§ 2005. Camps of instruction.
§ 2006. Penalty for absence from drills.
§ 2007. Record of attendance. Monthly returns.
§ 2008. Inspection and muster. Muster rolls.
§ 2009. Small arms practice.
§ 2010. War service.
§ 2011. Service medals.
§ 2012. Discipline and exercise.
§ 2013. Warning for duty.
§ 2014. Excuses from duty.

§ 2003. **Drills and parades.** Officers and enlisted men of each troop, signal corps and company must assemble for drill and instruction at least three times each month, at intervals of not less than one week, except in the month of December of each year. In addition to such drills and instructions, the commanding officer of any organization may require officers and enlisted men of his command to assemble for drill or instruction at such other times and places as he may appoint; *provided*, that no commanding officer shall order a parade without the approval of the commanding general of the brigade to which his organization is attached, or of the commander-in-chief. All mounted companies must drill mounted at least four times each year. Upon receptions, or upon the celebration of any event of public importance, the commander-in-chief, or the commanding general of a brigade, may order out any portion of the National Guard under his command to join in such parade. En. March 12, 1872. **Am'd.** 1889, 415; 1893, 106; 1895, 186; 1897, 112; 1897, 415. Rep. 1905, 258. En. Stats. 1905, 270.

§ 2004. **Companies parading with less than thirty-two members may be disbanded.** Any company parading at any

of the parades or drills in this article provided for with a less number than thirty-two, rank and file, must be reported to the adjutant-general, and by him reported to the commander-in-chief, who, in his discretion, may disband the same. En. March 12, 1872. **Am'd.** 1893, 107; 1895, 187. Rep. 1905, 258. En. Stats. 1905, 270.

§ 2005. **Camps of instruction.** Each troop, signal corps, or company not specially excused by the commander-in-chief, will be required to participate for at least five consecutive days annually in practice marches or camps of instructions, under such regulations as the commander-in-chief may prescribe, and under such instructors as he may appoint. Any company failing to report for duty at any camp of instruction must be reported to the adjutant-general, who must report the same to the commander-in-chief, who may, in his discretion, disband it. En. March 12, 1872. Rep. 1895, 187. En. Stats. 1905, 270.

§ 2006. **Penalty for absence from drills.** All officers or members of the National Guard who absent themselves from three consecutive assemblages, without an excuse acceptable to their respective commanding officers, are debarred from the privileges and exemptions provided for members of the National Guard; and all noncommissioned officers or privates upon being reported as having been so absent shall forthwith be court-martialed by order of the regimental or unattached battalion or squadron commander in their respective commands, and in all other organizations not attached to regiments, battalions, or squadrons but attached to brigades, by order of the brigade commander, and in all unattached organizations, by order of the commander-in-chief, and, upon conviction by such court-martial, which may be by summary court-martial, the delinquent shall be punished by dishonorable discharge from the service or fined. No fine imposed shall be less than five dollars nor more than fifty dollars. The proceedings of such court shall be subject to approval and review as in other cases. En. March 12, 1872. **Am'd.** 1877-8, 36; 1889, 430; 1897, 415. Rep. 1905, 258. En. Stats. 1905, 270.

§ 2007. **Record of attendance. Monthly returns.** Commanders of companies must cause to be kept a book in which must be entered the names and numbers of officers, non-

commissioned officers, and privates, respectively, present at each drill, and must therefrom make monthly returns, said returns to be forwarded through military channels to the adjutant-general. The books kept in accordance with the provisions of this section must be carefully preserved, and when filled, forwarded to the adjutant-general's office. En. March 12, 1872. Am'd. 1877-8, 36; 1885, 104; 1887, 87; 1889, 430; 1895, 187; 1897, 415. Rep. 1905, 258. En. Stats. 1905, 271.

§ 2008. **Inspection and muster. Muster rolls.** During each calendar year preceding the annual allotment of funds for military purposes under the revised statutes of the United States, the commander-in-chief shall cause an inspection and muster of the National Guard to be made. Said inspection may be made by an officer of the United States Army. En. Stats. 1897, 415. Rep. 1905, 258. En. Stats. 1905, 271.

§ 2009. **Small arms practice.** To encourage marksmanship, the commander-in-chief is authorized to offer annually a state decoration to those who shall excel in small arms practice, to be competed for under regulations prescribed by the commander-in-chief. En. Stats. 1897, 417. Rep. 1905, 258. En. Stats. 1905, 271.

§ 2010. **War service.** Service by any person in the United States Volunteers, or in the United States Army or Navy, in the time of war, insurrection, or rebellion, shall be considered as continuous service in the National Guard for any and all purposes regarding privileges and exemptions provided by law for members of the National Guard by enlistment or commission; *provided*, that continuous service for an officer shall include only the time he was commissioned as such. En. Stats. 1905, 271.

§ 2011. **Service medals.** The state shall provide a service medal of appropriate design and material, to be determined by the commander-in-chief. Such medal or medals to be issued for ten, fifteen and twenty years of active service in the National Guard. There shall be no other or different medals for service. Such medals shall be prepared and issued free of cost to those entitled to same, by the

adjutant-general, only upon application of the party entitled thereto, and upon proof of such service from the records of the National Guard. En. Stats. 1905, 271.

§ 2012. **Discipline and exercise.** The system of discipline and exercise of the National Guard of this state shall conform generally to that of the Army of the United States as it is now or may hereafter be prescribed by the President, and to the provisions of the laws of the United States, except as otherwise provided for in this chapter. En. Stats. 1905, 271.

§ 2013. **Warning for duty.** Officers and enlisted men may be warned for duty as follows: Either by stating the substance of the order, or reading the order to the person warned, or by delivering a copy of such order to such person, or by leaving a copy of such order at the last known place of abode or business of such person with some one of suitable age and discretion, or by sending a copy of such order or notice by mail directed to him at his last known place of abode or business or to the postoffice nearest thereto. Such warning may be given by any officer or noncommissioned officer. The officer or noncommissioned officer giving such warning shall make a return thereof containing the names of the persons warned, and the time, place, and manner of warning. Such return shall be verified by his oath, which may be administered by any commanding officer; such verified return shall be as good evidence on the trial of any person returned as a delinquent, of the facts therein stated, as if such officer or noncommissioned officer had testified to the same before the delinquency court on such trial. Every commanding officer shall make like return, on honor, and with like effect, of every delinquency and neglect of duty of his officers and noncommissioned officers, and also of every enlisted man, who shall refuse or neglect to perform such military duty as may be required. En. Stats. 1905, 272.

§ 2014. **Excuses from duty.** The officer ordering any military duty shall have the power to excuse any officer or enlisted man for absence therefrom upon good and sufficient grounds. En. Stats. 1905, 272.

ARTICLE V.

MILITARY COURTS.

§ 2018. Military courts enumerated.
§ 2019. Who may appoint courts-martial.
§ 2020. Powers.
§ 2021. Revision and approval of sentence.
§ 2022. Service of charges.
§ 2023. Subpoenas, attachments, commissions.
§ 2024. Form of mandates; execution by public officers.
§ 2025. Commitments for disorderly conduct.
§ 2026. Fines, how collected.
§ 2027. Fines and penalties for non-attendance at parades, etc.
§ 2028. Exemption from liability.
§§ 2029-2031. Repealed.

§ 2018. Military courts enumerated. The military courts of this state shall be:

(1) General courts-martial.
(2) The summary court.
(3) Courts of inquiry.

The constitution and jurisdiction of courts-martial, summary courts, and courts of inquiry, the form and manner in which the proceedings of such courts shall be conducted and recorded, the forms of oaths and affirmations taken in the administration of military law by such courts, the limits of punishment and the proceedings in revision thereof, shall be governed by the Articles of War and the law and procedure of similar courts of the United States, except as otherwise provided in this title. En. March 12, 1872. Am'd. 1877-8, 36; 1881, 32; 1885, 105; 1889, 430; 1897, 418. Rep. 1905, 258. En. Stats. 1905, 272.

§ 2019. Who may appoint courts-martial. The following officers may appoint courts-martial:

(1) The commander-in-chief, for the trial of all officers of the National Guard, retired officers, and all officers of the staff of the commander-in-chief.

(2) The brigade commander, for the trial of all officers and enlisted men in his brigade, except retired officers.

(3) The commanding officers of regiments, of unattached battalions, and the naval militia, for the trial of all enlisted men in their respective commands. For the trial of enlisted men of regiments or battalions or the naval militia, the commanding officer thereof may at any time appoint a summary court-martial, to consist of one officer, whose rank is not below that of captain in the National Guard, or the corresponding rank in the Naval Militia. For the trial of enlisted men of unattached companies, troops, or batteries, the commander-in-chief may, at any time, appoint a summary court-martial, to consist of a first lieutenant. En. March 12, 1872. Rep. 1905, 258. En. Stats. 1905, 272.

§ 2020. **Powers.** Courts-martial have power, on conviction, to punish by expulsion or dismissal, or by depriving officers of their rank, or by such other and usual military fines and penalties as are customary in the Army of the United States, in addition to penalties herein prescribed. En. March 12, 1872. Rep. 1905, 258. En. Stats. 1905, 273.

§ 2021. **Revision and approval of sentence.** The officer appointing a court-martial must review the proceedings and approve or disapprove the sentence of such court-martial, and must direct the execution of such sentence, or mitigate the punishment, or may remit the sentence of the person convicted; *provided*, that an officer so sentenced may within fifteen days after official publication of the action of the reviewing officer appeal to the commander-in-chief to review the proceedings and to disapprove them or pardon the offense, in which case the officer approving the sentence will forward the proceedings in the case to the commander-in-chief, and the execution of the sentence must be suspended until the proceedings are returned with the decision thereon; *provided*, that no commissioned officer shall be dismissed from the service without the approval of the commander-in-chief; *provided further*, that an enlisted man belonging to an organization attached to a brigade may appeal in like manner to the brigade commander, and if to an unattached organization, to the commander-in-chief; and the sentence must be suspended in the same manner as provided for in the case of commissioned officers. En. March 12, 1872. **Am'd.** 1877-8, 36. Rep. 1905, 258. En. Stats. 1905, 273.

§ 2022. **Service of charges.** When an officer or enlisted man is put in arrest for the purposes of trial, a copy of the charges and specifications upon which he is to be tried shall be delivered to him or left at his last known place of abode or business, within twenty days after his arrest, and a court shall be ordered for his trial within thirty days after the notice of arrest is received by the officer authorized to order the court. If a copy of the charges and specifications be not served, or a court not ordered within the time herein limited, the arrest shall cease, but such charges and specifications may be served, a court ordered, and the officer or enlisted man be brought to trial within twelve months after such release from arrest. The appearance of the accused, without objection and pleading to the charges, shall be deemed a waiver of any defect or irregularity of such service of any of the papers mentioned in this section. En. March 12, 1872. **Am'd.** 1880, 54; 1885, 105; 1887, 84; 1889, 430; 1891, 124; 1895, 187; 1897, 418. Rep. 1905, 258. En. Stats. 1905, 273.

§ 2023. **Subpoenas, attachments, commissions.** Each military court shall have the same power to compel by subpoena, by subpoena *duces tecum* and by attachment, the attendance of witnesses, both civilian and military, and the production of books, papers and documents, and to punish for contempt a witness duly subpoenaed for non-attendance, or refusal to be sworn or testify, or to produce books, papers and documents, as is possessed by any superior court of this state. Military courts shall also have power to take by commission the testimony of witnesses who can not reasonably be produced at the trial to the same extent as the superior court aforesaid. Commissions and subpoenas may be issued by the president or the judge-advocate, if there be one, of the court, both before and after being sworn, for witnesses whose attendance or testimony before such court may be necessary in behalf of the people of the state, and upon application in behalf of any person to be tried by such court, and the president or the judge-advocate may direct the commanding officer of any organization to cause such subpoena to be served on any member of his command. A witness not appearing in obedience to a subpoena when served personally with a copy of the same, and not having sufficient excuse, shall forfeit to the people of the state the sum of twenty-five dollars. The president of

each court shall, from time to time, report to the judge-advocate-general the names of all such delinquent witnesses, together with the names and places of residence of the person serving such subpoena, and a judge-advocate may sue for and recover such penalties in the name of the people. En. March 12, 1872. Rep. 1905, 258. En. Stats. 1905, 274.

§ 2024. **Form of mandates; execution by public officers.** Military courts are empowered to issue all process and mandates, including writs and warrants, necessary and proper to carry into full effect the powers vested in said courts. Such process and mandates may be directed to the marshal of the court, the sheriff of any county, and the constables and marshals of any town or city, and shall be in such form as may, from time to time, be prescribed by the commander-in-chief in the regulations issued by him under this chapter. It shall be the duty of all officers to whom such process or mandate may be so directed to execute the same and make return of their acts thereunder according to the requirements of the same. The keepers and wardens of all city or county jails shall receive the bodies of persons committed by the process or mandate of a military court and confine them in the manner prescribed by law. Except as otherwise specially provided in this chapter, no fees or charges of any nature shall be demanded or required to be paid by the state, or any military court or member thereof, or by the person executing its mandate or process, or to any public officer, for receiving, executing, or returning any such process or mandate, or for any service in connection therewith, or for receiving or confining a person in jail or custody thereunder. En. March 12, 1872. **Am'd.** 1895, 188. Rep. 1905, 258. En. Stats. 1905, 274.

§ 2025. **Commitments for disorderly conduct.** Any person who shall be guilty of disorderly, contemptuous, or insolent behavior in, or use insulting or contemptuous or indecorous language or expressions to, or before, any military court, or any member of such court in open court, tending to interrupt its proceedings or to impair the respect due to its authority, or who shall commit any breach of the peace or make any noise or other disturbance directly tending to interrupt its proceedings, may be committed by warrant under the hand of the president of the court to the jail of

the city, county, or city and county in which said court shall sit, there to be confined for a period of time not to exceed three days. En. March 12, 1872. Rep. 1905, 258. En. Stats. 1905, 275.

§ 2026. **Fines, how collected.** For the purpose of collecting fines or penalties imposed by courts-martial, the president of any such court must make a list of all such fines and penalties, and of the persons against whom they have been imposed, and must, within fifteen days after the fines and penalties have been imposed, issue a warrant under his hand, directed to any sheriff or constable of the county, commanding him to levy and collect such fines, together with costs, upon and out of any property of the person against whom the fine or penalty was imposed; and such warrant may be executed and renewed in the same manner as executions issued from the justices' courts are executed and renewed. En. March 12, 1872. Am'd. 1885, 105; 1887, 35. Rep. 1905, 258. En. Stats. 1905, 275.

§ 2027. **Fines and penalties for non-attendance at parades, etc.** Every commissioned officer and every enlisted man not excused as provided in section 2014 shall, on conviction of the offenses following mentioned be subject to the fines and penalties thereto annexed:

(1) Every commissioned officer, for disobedience to orders or neglect of duty, unofficerlike conduct, disrespect to a superior officer, for non-attendance at any parade or encampment; and every officer or enlisted man neglecting or refusing to obey the lawful orders of a superior officer, or departing from post or guard; or leaving his proper station without permission, a fine of not more than one hundred dollars nor less than five dollars, and in addition thereto, in the discretion of the court, the officer may be dismissed from the service.

(2) Every enlisted man, for non-appearance, when duly warned or summoned, at a troop, battery, or company drill, or parade, a fine of two dollars for each offense; and in case of a troop parading mounted, a fine of six dollars; at a regimental or battalion parade, not less than three nor more than six dollars for each offense; and for disobedience of orders, disrespectful or insubordinate conduct, a fine not to exceed fifty dollars; and, in addition to any fine imposed, in the discretion of the court, the offender may be dishon-

orably discharged from the service. En. March 12, 1872. Am'd. 1877-8, 41. Rep. 1885, 105. En. Stats. 1887, 85. Am'd. 1893, 107; 1895, 188. Rep. 1905, 258. En. Stats. 1905, 275.

§ 2028. **Exemption from liability.** No officer by whom a military court is ordered, or member of any such military court, or officer or person acting under its authority or reviewing the proceedings thereof or enforcing the process or sentence thereof shall be liable civilly or criminally for any act done in such capacity. En. March 12, 1872. Am'd. 1877-8, 36; 1881, 32; 1895, 188. Rep. 1905, 258. En. Stats. 1905, 276.

§ 2029. En. March 12, 1872. Am'd. 1877-8, 37. Rep. 1905, 258.

§ 2030. En. March 12, 1872. Rep. 1905, 258.

§ 2031. En. Stats. 1889, 431. Rep. 1905, 258.

ARTICLE VI.

ARMS, UNIFORMS AND EQUIPMENT.

§ 2039. Equipment of organizations.
§ 2040. Equipment of commissioned officers.
§ 2041. Uniform of enlisted men.
§ 2042. Full dress uniform.
§ 2043. Purchase of uniforms and equipments.
§ 2044. Property purchased with state money must be accounted for in annual muster roll.
§ 2045. Responsibility for public property.
§ 2046. Use of state and company property.

§ 2039. **Equipment of organizations.** All organizations shall be provided by the state with such arms, equipments, colors, camp and garrison equipage, books of instruction and record, and other supplies as may be necessary for the proper performance of the duty required of them by this chapter; and each organization shall keep such property in proper repair and in good condition. En. March 12, 1872. Re-en. Stats. 1905, 276.

§ 2040. **Equipment of commissioned officers.** Every commissioned officer shall provide himself with arms, uniforms, and equipments prescribed and approved by the commander-in-chief. En. March 12, 1872. Am'd. 1895, 188. Re-en. Stats. 1905, 276.

§ 2041. **Uniform of enlisted men.** Every enlisted man who enters the service of the state shall be furnished by the state with a service and dress uniform corresponding in make and general appearance to the service and dress uniform of the United States Army. En. March 12, 1872. Re-en. Stats. 1905, 276.

§ 2042. **Full dress uniform.** Regiments, and battalions and squadrons not part of regiments, may, with the consent of the commander-in-chief, adopt a distinctive full dress uniform at their own expense. En. March 12, 1872. Re-en. Stats. 1905, 276.

§ 2043. **Purchase of uniforms and equipments.** The commander-in-chief shall detail a board of three commissioned officers, who shall advertise for bids when necessary for the furnishing and making of the articles of uniforms and equipments provided by the state, and shall enter into contracts with the lowest responsible bidder or bidders. The bills of said board shall be audited, allowed, and paid as are other military demands. No accounts for furnishing uniforms or other parts of uniforms shall be audited unless accompanied by a certificate of an inspecting officer detailed by the adjutant-general, to the effect that the material used is of the quality prescribed by the commander-in-chief and that the articles are well made, as specified in the contract under which they are supplied. En. March 12, 1872. Re-en. Stats. 1905, 276.

§ 2044. **Property purchased with state money must be accounted for in annual muster roll.** All military property purchased out of the moneys allowed by the state shall be held to be the property of the state, and must be enumerated in the annual muster roll next following its purchase. En. March 12, 1872. Re-en. Stats. 1905, 276.

§ 2045. **Responsibility for public property.** Every officer and enlisted man to whom property of the state has been

issued shall be personally responsible to the state for such property, and no one shall be relieved from such responsibility except it be shown to the satisfaction of the commander-in-chief that the loss or destruction of such property was unavoidable and in no way the fault of the person responsible for the same; in all other cases the value of the property lost or destroyed shall be charged against the person at fault or to the organization to which it had been issued, and such person or organization, if not relieved from such charge by the commander-in-chief, shall pay the value of such property to the adjutant-general, within two years after such loss or destruction. The value of lost or destroyed property and the person or organization to be charged therewith shall be determined by a board of officers. En. March 12, 1872. Re-en. Stats. 1905, 277.

§ 2046. **Use of state and company property.** (1) No soldier shall wear or use, except when on military duty, or by special permission of his commanding officer, any uniform or other article of military property belonging to the state, or to the company of which he is a member.

(2) No officer in charge of public property for military use shall transfer any portion thereof, either as a loan or permanently, without the authority of the commander-in-chief. En. March 12, 1872. Re-en. Stats. 1905, 277.

ARTICLE VII.

PAY AND ALLOWANCE.

§ 2076. Pay of officers while on active duty.
§ 2077. Pay of officers when detailed on special duty.
§ 2078. Allowance for officers.
§ 2079. Allowances for military organizations. Military fund.
§ 2080. Annual allowance to companies.
§ 2081. Bonds of officers; captain ex-officio company treasurer.
§ 2082. Transportation of arms.
§ 2083. Adjutant-general to audit claims.
§ 2084. Duties of controller and treasurer.
§ 2085. Claims exempt from board of examiners.
§ 2086. Salaries, adjutant-general's office.

§ 2076. **Pay of officers while on active duty.** Officers while on active duty in the service of the state shall receive the same pay and allowance as officers of similar grade in the United States Army, and enlisted men while on active duty in the service of the state shall receive two dollars per day; *provided*, that no pay be allowed to any officer or enlisted man when on duty in any state camp mentioned in section 2005 of this act, except enlisted men of the band, who shall receive three dollars per day during encampments properly authorized by the commander-in-chief, and in any camp held in pursuance of order from the commander-in-chief each mounted officer and enlisted man shall receive two dollars per day for the horse necessarily used by him at such encampment; *and provided further*, that all enlisted men in attendance at joint maneuver camps of National Guard and United States Army shall receive one dollar per day in excess of the government pay per day at such camp. En. March 12, 1872. **Am'd.** 1877-8, 37; 1895. 189; 1897, 418; 1901, 587. **Re-en. Stats.** 1905, 277.

§ 2077. **Pay of officers when detailed on special duty.** When an officer is detailed for special duty in any manner relating to the National Guard, by order of the commander-in-chief, or by order of the brigade, regimental, or battalion commander, on approval of the commander-in-chief he must be allowed three dollars per diem and actual traveling expenses. En. March 12, 1872. **Am'd.** 1880, 55; 1901, 587. Re-en. Stats. 1905, 277.

§ 2078. **Allowance for officers.** Line officers below the grade of major shall receive annually the sum of twenty-five dollars to assist in uniforming and equipping themselves; *provided*, they have attended eighty per centum of all assemblages for the preceding year. En. March 12, 1872. **Am'd.** 1889, 431. Re-en. Stats. 1905, 278.

§ 2079. **Allowances for military organizations. Military fund.** There must be audited and allowed by the adjutant-general, and paid out of the appropriation for military purposes, upon the warrant of the state controller, to the commanding officer of each infantry or artillery company, or company of signal men of the National Guard, the sum of one hundred dollars per month; to the commanding officer of each light battery having not less than four guns,

with which they regularly drill and parade, and to the commanding officer of each troop of cavalry, the sum of two hundred dollars per month; and to the commanding officer of each division of the Naval Militia, the sum of one hundred dollars per month; the sum so paid to be used for armory rent, care of arms, and proper incidental expenses of the company. There must also be audited, allowed, and paid out of the same appropriation, to the commanding officer of each regiment or battalion, the sum of six dollars per month for each company in his command, for clerical expenses, stationery, printing, postage, and proper incidental expenses, and if the regiment or battalion has four companies or more, and has attached to it an organized and uniformed band of not less than twenty people, the additional sum of thirty-five dollars per month for such band; to the brigadier-general of each brigade, five dollars per month for each company in his brigade; to the surgeon-general, the sum of twenty-five dollars per month, for rent and proper incidental expenses; and to the adjutant-general, ten thousand dollars per annum, to be expended by him in promoting target practice. There must be audited and allowed by the adjutant-general, and paid out of the appropriation for military purposes, to the surgeon in charge of each detachment of the medical department on duty with a regiment, and to the chief surgeon of the Naval Militia, not to exceed the sum of fifty dollars per month, for rent and proper incidental expenses of such detachment. No claims shall be allowed under the provisions of this section except upon demands made quarterly, in duplicate, signed and sworn to by the officer claiming the same, before any field officer of the National Guard, or notary public, and forwarded through the regimental, independent battalion, squadron or company headquarters, with the approval of each commanding officer through whose headquarters they are required to pass, direct to the adjutant-general; *provided*, that the adjutant-general may make expenditures at any time for the promotion of target practice out of the appropriation for that purpose herein provided for. En. March 12, 1872. Re-en. Stats. 1905, 278.

§ 2080. Annual allowance to companies. The annual sum of two hundred and fifty dollars must be audited by the adjutant-general, and paid out of the appropriation for military purposes, to each company of the National Guard.

The amount so audited and allowed must be paid to the commanding officer of such companies for the use thereof. En. March 12, 1872. Re-en. Stats. 1905, 279.

§ 2081. **Bonds of officers; captain ex-officio company treasurer.** All officers of the National Guard having in their possession or under their control property or money of the state or of the United States or of any company must give such bonds and security as may be required by the adjutant-general to secure the state from loss on account of the misuse or misapplication of any state or company property or funds. Said bond must be with two or more good and sufficient sureties, or as provided in section 1056 of the Code of Civil Procedure, conditioned upon his faithful performance of all duties, and accounting for all property and moneys, including company funds, of which the commanding officer, who is ex-officio treasurer, shall be custodian. En. March 12, 1872. Re-en. Stats. 1905, 279.

§ 2082. **Transportation of arms.** The transportation of arms, equipments, and military stores issued to troops or received by the state, and all other military transportation, must be contracted for by the adjutant-general, under the direction of the commander-in-chief; and vouchers for such transportation, when approved by the adjutant-general, must be paid from the appropriation for military purposes, on the warrant of the state controller. En. March 12, 1872. Re-en. Stats. 1905, 279.

§ 2083. **Adjutant-general to audit claims.** The adjutant-general must audit and allow all proper claims against the military fund incurred by troops in the service of this state and by officers attached to the same. En. March 12, 1872. **Am'd.** 1895, 190. Re-en. Stats. 1905, 279.

§ 2084. **Duties of controller and treasurer.** The controller of the state must draw his warrants for any amount approved and allowed as provided in this title, and the treasurer of the state must pay the same out of the appropriation for military purposes, if not otherwise provided. En. March 12, 1872. **Am'd.** 1897, 420. Re-en. Stats. 1905, 279.

§ 2085. **Claims exempt from board of examiners.** Claims audited and allowed as provided in this chapter are exempt

from the provisions of Article XVIII of Chapter III, Part III, of this code. En. Stats. 1877-8, 38. Re-en. Stats. 1905, 279.

§ 2086. **Salaries, adjutant-general's office.** There shall be allowed and paid out of the general fund in the state treasury the following salaries, payable monthly:

(1) To the adjutant-general, three thousand dollars per annum.

(2) To the assistant adjutant-general, two thousand four hundred dollars per annum.

(3) One chief clerk, eighteen hundred dollars per annum.

(4) Three clerks, sixteen hundred dollars each per annum.

(5) One stenographer, twelve hundred dollars per annum.

(6) One armorer and porter, twelve hundred dollars per annum. En. Stats. 1877-8, 38. Re-en. Stats. 1905, 279.

ARTICLE VIII.

PRIVILEGES, PROHIBITIONS, ETC.

§ 2093. Exemption from arrest.
§ 2094. Right of way. Freedom from interference.
§ 2095. Trespassers and disturbers to be placed in arrest.
§ 2096. Bands.
§ 2097. Decorations and medals.
§ 2098. Exemptions, etc.
§ 2099. Casualties in the National Guard; how provided for.
§ 2100. By-laws.
§ 2101. Fines.
§ 2102. Honorary members.
§ 2103. Rules and regulations.
§ 2104. Custom and usage of the United States army.
§ 2105. Colors.
§ 2106. No fees allowed to officers for administering oaths.

§ 2093. **Exemption from arrest.** No person belonging to the military forces is subject to arrest on civil process while going to, remaining at, or returning from, any place at which he may be required to attend for military duty. En. March 12, 1872. Am'd. 1885, 105. Re-en. Stats. 1905, 280.

§ 2094. **Right of way. Freedom from interference.** The commanding officer of any portion of the active militia

parading or performing any military duty in any street or highway may require any or all persons in such street or highway to yield the right of way to such militia; *provided*, the carriage of United States mail, the legitimate functions of the police, and the progress and operations of the hospital ambulances and fire engines and fire departments, and apparatus of the insurance patrol shall not be interfered with thereby. All others who shall hinder, delay or obstruct any portion of the active militia whenever parading or performing any military duty, or who shall attempt so to do, shall be guilty of a misdemeanor. En. March 12, 1872. Am'd. 1875-6, 30; 1877-8, 40; 1880, 57; 1885, 106; 1887, 86; 1891, 125; 1893, 108; 1895, 191; 1897, 420; 1901, 588. Re-en. Stats. 1905, 280.

§ 2095. **Trespassers and disturbers to be placed in arrest.** The commanding officer upon any occasion of duty may place in arrest during the continuance thereof any person who shall trespass upon the camp ground, parade ground, armory, or other place, or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to or returning from any duty. En. March 12, 1872. Am'd. 1877-8, 39; 1880, 55; 1891, 125. Re-en. Stats. 1905, 280.

§ 2096. **Bands.** When bands of music have not been organized for any regiment or battalion in the manner provided in the regulations of the Army of the United States, such regiment or battalion, through its commanding officer, may hire the services of any band of musicians; and the persons so employed are, during the term of their engagement, subject to the same laws and regulations that govern the military with which they may serve. En. March 12, 1872. Re-en. Stats. 1905, 280.

§ 2097. **Decorations and Medals.** The insignia of the Veterans of the Mexican War, the Military Order of the Loyal Legion, the Grand Army of the Republic, the United Spanish War Veterans, and of the armies or army corps, indicating actual services in the field, medals presented by the United States, and state, or by the Native Sons of the Golden West, indicating service in the Spanish-American War, and badges indicating long and faithful service in the National Guard of this and other states, and state decora-

tions for marksmanship, may be worn by officers and men of the National Guard entitled to them, upon the breast, in one line, on the dress or full dress uniform coat, the top of the ribbons on a line with the arm-pit, in the order named above, from right to left. No other medals, badges, ribbons, or decorations shall be worn. En. March 12, 1872. **Am'd.** 1877-8, 39. Re-en. Stats. 1905, 280.

§ 2098. **Exemptions, etc.** (1) All officers and enlisted men of the National Guard who comply with all military duties, as provided by law and regulations, are entitled to the following privileges and exemptions, viz.: Exemption from road tax and head tax of every description, except poll tax provided for in article thirteen, section twelve, of the Constitution; exemption from jury duty, and service on any posse comitatus. All officers and enlisted men who have faithfully served in the military service of this state for the space of seven consecutive years, or eleven years not consecutive, and received the certificate of the adjutant-general certifying the same, are thereafter exempted from further jury duty and military duty except in time of war. And the adjutant-general must issue such certificate of exemption when it appears that the party applying is entitled to the same.

(2) Officers and enlisted men heretofore or hereafter honorably discharged or mustered-out of the service by reason of the disbandment or consolidation of any organization, or by the provisions of any act of the legislature, shall be, and the same are hereby entitled to all the privileges and exemptions mentioned in this section, upon making a proper application therefor; *provided*, they shall have served at least five years continuously in the National Guard.

(3) Former members of the National Guard who have been honorably discharged for "expiration of term of service" or on account of "removal," and have returned to the limits of their commands, and officers who have resigned, been honorably discharged, or whose terms have expired, who re-enlist or re-enter the National Guard within ninety days from the date of their discharge or the expiration of their term of office, will be given credit for continuous service, and the enlistment considered consecutive. En. March 12, 1872. Re-en. Stats. 1905, 281.

§ 2099. **Casualties in the National Guard; how provided for.** Every officer or enlisted man wounded or disabled in

the service of the state shall have reasonable expenses paid him; and the widow and children of every officer or enlisted man killed in the service of the state shall be suitably provided for by the legislature. En. March 12, 1872. Am'd. 1875-6, 31; 1877-8, 39; 1880, 55; 1891, 126; 1897, 421. Re-en. Stats. 1905, 281.

§ 2100. **By-laws.** Regimental, battalion, and company rules of government and by-laws, regularly adopted by a majority of the elected officers of such regiments and battalions, or members of companies, and approved by the commander-in-chief, may be adopted and enforced in such regiments, battalions, and companies, if they are not in conflict with the laws and regulations of this state. En. Stats. 1877-8, 41. Re-en. Stats. 1905, 281.

§ 2101. **Fines.** All fines and penalties for non-attendance upon drills, parades, and inspections, legally determined and imposed under the provisions of such rules and by-laws provided in section 2100, may be collected by action in justices' court, in the name of the people of the State of California; and the books and records of regiments, battalions, and companies, and the proceedings under which delinquents are fined, are prima facie evidence of the facts therein stated. En. Stats. 1889, 432. Rep. 1897, 421. Re-en. Stats. 1905, 281.

§ 2102. **Honorary members.** Each company, troop, or battery, may have not to exceed ten honorary members, who shall pay fifty dollars per annum into the company, troop, or battery, and shall thereupon be entitled to all exemptions to which those on the active list are entitled, and shall not be required to drill or perform any military duty by reason of such membership. En. Stats. 1905, 282.

§ 2103. **Rules and regulations.** The commander-in-chief is hereby authorized to make such rules and regulations as he may deem expedient, but such rules and regulations shall conform to this act, and, as nearly as practicable, to those governing the United States Army, and when promulgated shall have the same force and effect as the provisions of this chapter. The rules and regulations in force at the time of the passage of this chapter shall remain in force until new rules and regulations are approved and promulgated. En. Stats. 1905, 282.

§ 2104. **Custom and usage of the United States Army.** All matters relating to the organization, discipline and government of the National Guard not otherwise provided for in this title or in the general regulations shall be decided by the custom and usage of the United States army or navy, respectively. En. Stats. 1905, 282.

§ 2105. **Colors.** The colors carried by organizations of the National Guard shall be such as are borne by similar organizations of the United States army, except that the regimental or battalion colors shall have thereon the state coat-of-arms, instead of the arms of the United States; and no military organization provided for by the constitution and laws of the state and receiving state support, shall, while under arms, either for ceremony or duty, carry any device, banner, or flag of any state or nation, except that of the United States or the State of California. En. Stats. 1889, 432. Am'd. 1897, 421. Re-en. Stats. 1905, 282.

§ 2106. **No fees allowed to officers for administering oaths.** No officer, civil or military, qualified to administer oaths, shall charge or receive any fee or compensation for administering, or certifying any oaths administered or certified, under the provisions of this title. En. Stats. 1905, 282.

ARTICLE IX.

NAVAL MILITIA.

§ 2111. Divisions.
§ 2112. Organization.

§ 2111. **Divisions.** The organized Naval Militia of California shall consist of seven divisions, including one engineer division. The Naval Militia shall be located throughout the coast of the state at the discretion of the commander-in-chief. The word "division" as used in this section in connection with the Naval Militia shall have the same meaning and effect as "company" when used in connection with the infantry. En. March 12, 1872. Am'd. 1877-8, 40. Re-en. Stats. 1905, 282.

§ 2112. **Organization.** The numerical strength, rank, titles, and insignia of rank of the divisions of the Naval

Militia shall conform to the laws, rules, and regulations of the United States navy, so far as the same may be effectively applicable. The Naval Militia shall be commanded by a captain. There shall also be the following commissioned officers, viz.: one commander and one lieutenant commander, who, in order of rank, in the absence or disability of the superior, shall perform his duties and shall at all times assist the commanding officer in the performance of his duties; one chief engineer, with the rank of lieutenant commander, and one lieutenant. The lieutenant shall be subject to detail by the commanding officer of the Naval Militia as navigating and ordnance officer or such other proper detail as such commanding officer may desire. The above officers to be elected in the same manner and to hold office for the same term as field officers of the National Guard. All elections for officers in the Naval Militia shall be ordered by the commander-in-chief.

There may also be a chaplain, who shall be of the same grade and rank as in the United States navy and who shall be appointed by the commander-in-chief. Each division of the Naval Militia shall be commanded by a lieutenant, and shall include one lieutenant junior grade, two ensigns, and not less than forty nor more than one hundred petty officers and seamen. The commissioned officers of each division shall be elected in the same manner and hold office for the same term as company officers of the National Guard. Officers of the Naval Militia may be retired as provided in section 1963, of this chapter. The lieutenant and the lieutenant junior grade of the engineer division shall each hold the grade of passed assistant engineer, and the ensigns of the engineer division shall each hold the grade of assistant engineer. All engineer officers shall be recognized engineers or machinists of at least two years standing. The pay department of the Naval Militia shall consist of one paymaster with the rank of lieutenant, and one passed assistant paymaster, with the rank of lieutenant junior grade, who shall be staff officers, to be appointed and qualified as are other staff officers of the National Guard. The medical department of the Naval Militia shall be allowed the following commissioned officers, viz.: One surgeon, with the rank of lieutenant, and there may be to each division of the Naval Militia one assistant surgeon with the rank of lieutenant junior grade. The appointment of the commissioned officers of the medical department of the Naval Militia shall be made by the commander-in-chief,

and no person shall receive the appointment of surgeon or assistant surgeon unless he is a licensed graduate of a medical school, and unless he shall have been examined and approved by a medical board, consisting of not less than three surgeons, designated by the commander-in-chief, upon the recommendation of the surgeon general of the National Guard. All officers of the Naval Militia, prior to being commissioned, consequent upon an election, appointment, re-election, or reappointment, shall be subject to examination as to qualification and general fitness for the service by a board of officers, to be detailed by the commander-in-chief. The warrant officers, chief petty officers, and petty officers of the Naval Militia shall be the same as in the United States navy and of such numbers as the exigencies of the service may require. Warrants for warrant officers may be issued by the adjutant-general upon the recommendation of the commanding officer of the Naval Militia. Chief petty officers and petty officers shall be appointed by the commanding officer of the Naval Militia. The organization of the Naval Militia shall conform generally to the provisions of the laws of the United States; and the system of discipline and exercise shall conform, as nearly as may be, to that of the navy of the United States, as it is now, or may hereafter be, prescribed by Congress, and that prescribed by the provisions of the Political Code relating to the National Guard of California; and the commander-in-chief shall have power to alter, divide, annex, consolidate, or disband the Naval Militia, whenever in his judgment the efficiency of the state forces will thereby be increased, and he shall have power to make such rules and regulations as may be deemed proper for the use, government, and instruction of the Naval Militia; but such rules and regulations shall conform as nearly as practicable to those governing the United States navy. The commander-in-chief is authorized to apply to the President of the United States for the detail of commissioned and petty officers of the navy, to act as inspectors and instructors in the art of naval warfare. Courts-martial for the Naval Militia, when necessary, shall be ordered by the commander-in-chief, and shall be organized and conducted under the laws, regulations, and usages of the United States navy and the provisions and sections relating to military courts in this chapter. The proceedings shall be reviewed and sentences executed as provided in this chapter.

Sec. 2. The provisions of this chapter shall be in force and effect from and after its passage and approval.

Sec. 3. All officers of the National Guard deprived of office by reason of this act are hereby placed upon the retired list, with the rank held by each. En. March 12, 1872. Rep. 1875-6, 31. Re-en. Stats. 1905, 283.

§ 2153a. **Hospitals and home for care of feeble-minded children, appointments by superintendent.** The medical superintendent of each hospital must appoint, by and with the consent of the board of managers: 1. A supervisor, matron, and steward, and all employés, none of whom must be his relatives, or that of any member of the board of managers, either by consanguinity or marriage, who shall be subject to such examination as he deems for the best interest of the hospital, the questions to be prepared by the general superintendent, subject to the approval of the commission;

2. **Physicians and internes.** Such assistant physicians and internes as may be determined by the commission. Such assistant physicians and internes must be graduates of incorporated medical colleges, well educated in their profession, who have received a certificate from the state board of medical examiners, and of good moral character;

3. **Qualifications of physicians.** Where there are first and second assistant physicians, the first assistant physician must have had two years' actual experience, and the second assistant physician one year's actual experience in the care and treatment of the insane;

4. **Woman physicians.** From and after the first day of July, A. D. 1905, whenever an additional assistant physician is appointed in any state hospital for the care and treatment of the insane or the California Home for the Care and Training of the Feeble-Minded Children at Eldridge, Sonoma County, the appointment of such additional assistant shall be so made that a least one physician in each of said state hospitals and said home shall be a woman.

5. **Examination of physicians.** No appointment of any person as first, second, or other assistant physician or interne shall be effective for any purpose, unless such person shall pass or has passed an examination touching his qualifications for such position in all the different branches of medicine and surgery, and especially of diseases affecting the mind and nervous system. Such examination shall be conducted by the medical superintendent on ques-

tions prepared by the general superintendent and by such medical superintendents as may be designated by the commission, subject to the approval of the commission. In passing of an examination for a given position in any state hospital shall qualify any person for a similar position in any other state hospital;

6. **Homeopathic physicians.** At the homeopathic state hospital all assistant physicians and internes besides possessing the qualifications herein prescribed, must be graduates of an incorporated homeopathic medical college;

7. **Duty of superintendent.** The medical superintendent must: Give such orders and instructions as he may deem best calculated to insure good conduct, fidelity, and economy in every department of labor and expenses;

8. **Same.** Maintain salutary discipline among all who are employed in the institution, and enforce strict compliance with his instructions and uniform obedience to all rules and regulations of the hospital;

9. **Same.** Cause full and fair accounts and records of the entire business and operations of the hospital to be kept regularly, from day to day, in books or forms provided for that purpose;

10. **Duty of superintendent.** See that all such accounts and records are fully up to the last day of June in each year, and that the principal facts and results, with his report thereon, are presented to the managers within thirty days thereafter, who must incorporate them in their report to the commission;

11. **Same.** Keep a book, in which he must cause to be entered at the time of reception of any patient, his name, residence, and occupation, and the date of such reception, by whom brought and by what authority, and on whose petition committed, and an abstract of all orders, warrants, requests, petitions, certificates, and other papers accompanying such person;

12. **Same.** To prepare and keep the pay-rolls of the hospital, and collect all moneys; keep the accounts for the support of the patients, and expenses incurred in their behalf; furnish the treasurer statements thereof as they fall due; turn all moneys collected over to the treasurer, and report same to the board of managers at each meeting; notify the treasurer of the death or discharge of reimbursing or pay patients, within five days after such death or discharge;

13. **Same.** Prepare triplicate estimates of the amount, kind, and quality of furniture and household furnishing goods, provisions, fuel, forage, clothing or material for clothing, and other material required for the twelve months ending June thirtieth of each year, which must be approved by the board of managers, unless a different time is allowed by the commission. He must submit two of the triplicate estimates to the commission, and file the third in his office. The commission may revise the estimate for supplies, either as to quality or quantity thereof, and must certify that it has carefully examined the same, and that the articles contained in such estimate, as approved by it, are actually required for the use of the hospital; whereupon, after having approved the estimates, the commission must, beginning upon the fifteenth day of the month preceding the month in which contracts are to be let, advertise for four successive weeks, for contracts for furnishing such supplies; said advertising being in brief, referring to the class of supplies and the fact that all contemplated bidders can receive schedules by applying to the superintendents or secretaries of the various hospitals, or the state commission. All contracts must be awarded to the lowest responsible bidder, or bidders, upon their giving to the board of managers a bond, amounting to one fourth of their actual bids, as security for the faithful performance of the same. The board of managers reserves the right to reject any and all bids submitted to them.

14. **Same.** Prepare monthly triplicate estimates, as approved by the board of managers, two of which must be submitted to the commission, and the other filed in the superintendent's office, for necessary expenditures required for the hospital of which he is superintendent, for the ensuing month. The commission may revise these estimates for supplies, either as to quality, quantity, or price thereof, and must certify that they have been carefully examined, and that the articles contained in such estimates, as approved by it, are actually required for the use of the hospital; whereupon the board of managers must direct its superintendent to secure the supplies according to the approved estimates. En. Stats. 1903, 494. Am'd. 1905, 85.

§ 2189. **State hospitals, discharge of patients from.** The superintendent of a state hospital on filing his written certificate with the secretary of board of managers, may dis-

charge any patient, except one held upon an order of a court or judge having criminal jurisdiction in an action or proceeding arising out of a criminal action or proceeding arising out of a criminal offense, at any time, as follows:

1. A patient who, in his judgment, has recovered;

2. Any patient who is not recovered, but whose discharge, in the judgment of the superintendent, will not be detrimental to the public welfare, or injurious to the patient. The medical superintendent may, when he deems it advisable, refuse to discharge any patient as improved, unless the guardian, friends or relatives of such patient shall satisfy such medical superintendent that they are financially able and willing to properly care for such patient after his discharge. When the superintendent is unwilling to certify to the discharge of an unrecovered patient, upon request, and so certifies in writing, giving his reasons therefor, any superior judge of the county in which the hospital is situated may, upon such certificate, and an opportunity of a hearing thereon being accorded the superintendent and upon other proofs as may be produced before him, direct, by order, the discharge of such patient, upon such security to the people of the state as he may require for the good behavior and maintenance of the patient. The certificate and the proof, and the order granted thereon, must be filed in the clerk's office of the county in which the hospital is situated, and a certified copy of the order in the hospital from which the patient is discharged.

3. The superintendent may grant a parole to a patient, not exceeding thirty days, under general conditions prescribed by the commission.

4. A patient committed to a hospital under the provisions of chapter six, title ten, part two, of the Penal Code, must, upon the certificate of the superintendent that such person has recovered, approved by the superior judge of the county from which the patient was committed, be redelivered to the sheriff of such county, and dealt with as provided for by said chapter six of the Penal Code.

5. The medical superintendent of a state hospital may on his own motion and must on the order of the commission, discharge any patient who is not insane, or because he is not a proper case for treatment therein, or because such patient is a case of idiocy, imbecility, chronic, harmless mental unsoundness or acute mania a potu. Such person,

when discharged, shall be returned to the county from which he was committed at the expense of said county. When such person is a poor and indigent person he shall be delivered to the sheriff of the county who must take the necessary steps for the care of such person. When such person is a poor and indigent person he shall be cared for by such county as are other indigent poor, and it is hereby made the duty of the board or officer or officers having charge of the place where other poor and indigent persons are kept by the county to receive such discharged patients therein.

When any person is discharged from any state hospital as is last herein provided, he shall not be again committed to any state hospital for the insane unless permission for such recommitment be first obtained from the medical superintendent thereof. Said medical superintendent shall refuse to receive such person on such recommitment unless such permission is obtained as herein provided.

6. When any person is discharged as recovered from a state hospital a copy of the certificate of discharge duly certified by the secretary of the board of managers, may be filed for record with the clerk of the superior court of the county from which said person was committed. The clerk shall record the same in a book kept for that purpose, and shall keep an index thereof. No fees shall be charged by the clerk for performing such duties. Such certified copy of such certificate and the record of the same shall have the same legal effect as the original, and if no guardian has been appointed for such person as provided by sections seventeen hundred and sixty-three and seventeen hundred and sixty-four of the Code of Civil Procedure, such certificate, duly certified copies thereof and such record thereof shall have the same legal force and effect as a judgment of restoration to capacity made under the provisions of section seventeen hundred and sixty-six of the Code of Civil Procedure. The term patient as used in subdivisions one, two, three and six of this section shall be regarded as referring to and including inmates of the home for the feeble-minded. En. Stats. 1903, 509. Am'd. 1905, 174.

§ 2191. State hospital; commitment of person a nonresident; return of to state or country where he belongs. If any order is issued by any judge committing to a state hospital a poor or indigent person who has (not been a legal

resident of this state for a period of at least one year), the commission may in its discretion return said person, either before or after his admission to the state hospital, to the country or state to which he belongs, and for such purpose may expend as much of the money appropriated for the care of the insane or incompetent as may be necessary, subject to the approval of the state board of examiners. The medical superintendent of a state hospital is required to immediately notify the commission if there is any question as to the propriety of the commitment or detention of any person received at such hospital, and said commission upon such notification shall inquire into the matter presented and take such action as may be deemed proper in the premises. En. Stats. 1903, 510. **Am'd.** 1905, 228.

§ 2197. **Commission in lunacy may bring action to enforce payment of certain costs.** The commission may in its own name bring an action to enforce payment for the cost of determining the insanity of any person and securing his admission into a state hospital when his estate or any person is liable for the same, or to recover for the use and benefit of any state hospital or for the state the amount due for the care, support, maintenance and expenses of any patient or inmate therein, against any county, person, guardian or relative liable for such care, support, maintenance and expenses. En. March 12, 1872. Rep. 1903, 485. En. Stats. 1903, 513. **Am'd.** 1905, 184.

§ 2236. **Deaf, Dumb and Blind Asylum, change of name.** The Institution of the Deaf and Dumb and the Blind located at Berkeley in Alameda county and heretofore known as the Deaf, Dumb and Blind Asylum shall hereafter be named and known and designated as the "California Institution for the Deaf and the Blind." En. Stats. 1905, 488.

§ 2237. **Objects of.** The Institution for the Deaf and the Blind, located at Berkeley, Alameda Co., is a part of the school system of the state, except that it shall derive no revenue from the public school fund, and has for its object the education of the deaf and the blind who, by reason of their infirmity, cannot be taught in the public schools. It shall be known and designated as the California Institution for the Deaf and the Blind. En. March 12, 1872. **Am'd.** 1905, 488.

§ 2255. Supp. Cal. Rep. Cit. 145, 470. Subd. 2—145, 470. Subd. 3—145, 470. Subd. 4—145, 470. Subd. 5—145, 471. Subd. 6—145, 471.

§ 2268. Supp. Cal. Rep. Cit. Subd. 1—145, 471. Subd. 2—145, 471; 145, 473. Subd. 3—145, 471; 145, 473.

§ 2466. **Rates of pilotage at San Francisco.** The following shall be the rates of pilotage into and out of the harbor of San Francisco: All vessels under five hundred (500) tons three ($3.00) dollars per foot draught; all vessels over five hundred (500) tons three ($3.00) dollars per foot draught and three (3c) cents per ton for each and every ton registered measurement; and every vessel spoken inward or outward bound except as hereinafter provided shall pay the said rates. A vessel is spoken by day by a pilot boat displaying a union jack or by night displaying a torch or flare up within a distance of three (3) miles of the vessel. In all cases where inward bound vessels are not spoken until inside of the bar the rates of pilotage herein provided shall be reduced fifty (50) per cent. Vessels engaged in the whaling or fishing trades shall be exempt from all pilotage except where a pilot is actually employed. En. March 12, 1872. **Am'd.** 1877-8, 47; 1905, 815.

§ 2468. **Same. Exemption and reduction of pilotage.** All vessels sailing under an enrollment, and licensed and engaged in the coasting trade between the port of San Francisco and any other port of the United States shall be exempt from all pilotage unless a pilot be actually employed. All foreign vessels and all vessels from a foreign port or bound thereto, and all vessels sailing under a register between the port of San Francisco and any other port of the United States shall be liable for pilotage as provided in section twenty-four hundred and sixty-six (2466) of this code. En. March 12, 1872. **Am'd.** 1877-8, 47; 1891, 496; 1905, 815.

§ 2570. **Port of Eureka, harbormaster; refusal or neglect to obey orders of.** A harbormaster of the port of Eureka, which office is hereby created, shall be appointed by the governor of this state on or before the first day

of April, eighteen hundred and ninety-nine (1899), and shall hold office for the term of four years from and after the date of his appointment, and until his successor is appointed and qualified.

It shall be the duty of the harbormaster to collect, from day to day, all data necessary to enable the secretary of the board of harbor commissioners to compile the reports mentioned in section 2571 of this code.

He must enforce and carry into effect such rules and regulations as the board of harbor commissioners may from time to time adopt.

The harbormaster may be removed from office by the governor of this state upon the recommendation of the full board of harbor commissioners upon, and after due investigation by said board for cause affecting his official character or competency, or the failure or want of ability to perform his official duties, or for the violation of any law relating to his duties or office. A full report of such cause or causes shall be certified to the governor by said board, and spread upon the minutes of the meeting thereof, whereat such investigation and order were made.

If any master, agent, or owner of any water craft shall refuse or neglect to obey the lawful orders or directions of the harbormaster in any matter pertaining to the regulations of said harbor, such master, agent, or owner so refusing or neglecting is guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be punished by a fine not to exceed five hundred dollars ($500.00), or by imprisonment not to exceed six months in the county jail of the county of Humboldt. **En.** March 12, 1872. **Am'd.** 1899, 89; 1901, 65; 1905, 200.

§ 2571. **Secretary of board of harbor commissioners.** The board of harbor commissioners shall within thirty days after the passage of this act appoint a competent person who shall be known as the secretary of the board of harbor commissioners of the port of Eureka, who shall hold office for the term of four years from the date of his appointment, or until his successor is appointed. It shall be the duty of such secretary to keep the office of the board of harbor commissioners open from 9 A. M. until 5 P. M. on all days except legal holidays. He shall safely keep and be responsible for all the books, papers, and records of the

board, attend all of their meetings, keep a correct record of their proceedings, with the names of the commissioners present thereat and keep a full and correct record of all steam and sailing vessels entering and arriving or clearing and departing to and from Humboldt bay, with a complete detailed record of their cargoes, with the port to which they sail or from which they have sailed, and he shall make reports monthly thereof in tabulated form and record the same in the records of the office, and make such other reports as directed by the board.

He shall semi-annually cause to be printed such reports and shall for that purpose advertise for sealed bids for printing the same which bids shall be opened only in the presence of the whole board and such printing shall be awarded by said board to the lowest responsible bidder therefor.

He shall have no authority nor shall the said board have authority to direct the secretary to print other matter in or upon his reports, or otherwise, except what may be necessary in the performance of any duty imposed by law upon said board, and any printing authorized by said board or said secretary other than as herein provided shall be and is hereby declared to be illegal, and shall not be a charge against the county of Humboldt or the city of Eureka.

Such secretary may be removed from office by the governor of this state upon the recommendation of the full board of harbor commissioners upon and after due investigation by said board for cause affecting his official character or competency, or the failure or wants of ability to perform his official duties or for the violation of any law relating to his duties or office. A full report of such cause or causes shall be certified to the governor by said board, and spread upon the minutes of the meeting thereof whereat such investigation and order were made. En. March 12, 1872. Am'd. 1889, 88; 1899, 90; 1901, 65; 1905, 201.

§ 2572. **Harbor commissioners, secretary, harbormaster, civil engineer, salaries of.** The commissioners of the board of harbor commissioners of the port of Eureka shall each receive a salary of four hundred dollars per annum.

The secretary shall receive a salary of one thousand dollars per annum.

The harbormaster shall receive a salary of one thousand dollars per annum.

The board may secure the services of a competent civil engineer at such times as in their opinion they deem it necessary. The fees or salary of such engineer not to exceed ten dollars ($10) per day for each day actually employed. Nothing herein contained shall be construed as creating the office of engineer, nor shall his employment extend beyond the particular service for which he was employed.

All salaries of said commission and its officers herein named are to be paid out of the treasury of Humboldt county at the same time and in the same manner as the salaries of the county officers are paid and all expenses of said commission necessarily incurred are to be paid from said treasury in the same manner that claims against said county are paid. En. March 12, 1872. **Am'd.** 1905, 202.

§ 2584. **San Diego, harbor commissioners of, salaries and expenses.** Of the moneys collected, there shall be retained by said commissioners, commencing with April 1st, 1905, such sums as may be necessary to pay the salaries of said commissioners, and that of the secretary of said board, and the fees or compensation of its attorney and engineer, and such salaries as may be fixed for any employés appointed by said board; also such sums as may be necessary to pay office rent, cost of office furniture, books, stationery, lights, fuel, repairs to wharves and such legal and other incidental expenses connected with the prosecution or defense of any suit or suits, instituted by or against said board of harbor commissioners, which said sum or sums of money, so retained by said board of harbor commissioners, shall be deposited in some bank, selected by said board, as its depository, in the name and to the credit of "The Board of Harbor Commissioners for the Bay of San Diego," and shall be disbursed and paid out upon checks drawn upon said account, signed by the president of said board and countersigned by the secretary thereof. After the full payment of all liabilities incurred for the purposes hereinbefore specified, any excess of collections over and above that required to meet the current expenses of said board shall be remitted to the state treasurer by express. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 316. **Am'd.** 1905, 510.

§ 2606. **Harbor, bay of San Diego, wharves, etc.** Every person, association or corporation desiring to construct,

erect, extend, or maintain, or to continue the maintenance of any wharf, pier, marine ways, dry dock or ship yard in the waters of San Diego bay, or to procure the extension of his or its rights to maintain any wharf, pier, marine ways, dry dock or ship yard therein, must make an application to the said commissioners, in writing signed by the applicant or applicants, and setting forth a map, plat or plan of said wharf, pier, marine ways, dry dock or ship yard, showing the location thereof, and of the lands and waters bordering thereon or near the same, and the names of the owners, occupants, or claimants of such lands and waters, or of the use thereof. Said map, plat, or plan shall also show the dimensions, form and construction of said wharf, pier, marine ways, dry dock or ship yard, and the distance into and along said waters the same shall extend, and also show the uses and purposes to and for which said structure is to be applied and the convenience and necessity, public or private, of, or for the same. Upon the presentation and filing of such application the commissioners must appoint a time and place for hearing the same, which shall be at least ten days and not more than twenty days from its presentation. Notice of the hearing shall be given by the said commissioners, by publication in at least two daily newspapers published in the county of San Diego three times in the week of seven days, preceding the time appointed for the hearing. At the time and place appointed for such hearing, or such other time and place to which said hearing may be continued or adjourned, upon proof being made that notice of the hearing has been given as herein provided, the commissioners shall proceed to the examination of said application and the hearing of all parties and persons who may be brought before them touching or concerning the same, and after such hearing, and due deliberation, they may reject or refuse the said application, or grant the same as asked for, or make such conditions, restrictions, limitations, alterations or additions as they may deem necessary or proper. Such permission shall not be granted for a greater period than twenty-five (25) years. No person shall build, construct or maintain any wharf, or pier or marine ways, dry dock or ship yard, on or along the waters of said bay without first having obtained permission to do so from said commissioners, and whenever permission is granted to build, construct or maintain one, it shall be built, constructed or maintained out of material satisfactory to the

said commissioners and not beyond the United States pierhead line; *provided*, no franchise granted within or bordering upon the corporate limits of any city shall be valid until the same shall be ratified and confirmed by an ordinance of such city. Said commissioners shall have authority to fix a maximum toll to be charged for the use of any wharf, pier, marine ways, dry dock or ship yard, whether the same has already been constructed or shall hereafter be constructed, and to make all needful rules and regulations concerning the use of the same; *provided further*, that if at any time the said commissioners shall desire to terminate any franchise and to purchase any wharf, pier, marine ways, dry dock or ship yard, and the purchase price thereof cannot be agreed upon, then the owner of said franchise shall select two disinterested persons, and the said commissioners two disinterested persons, who shall ascertain and fix the value thereof, and if three of said four persons cannot agree, then they shall appoint a fifth competent disinterested person, and any three of said five persons may fix the value thereof, and upon the payment or tender thereof by the commissioners, they shall be entitled to the possession thereof, and the title thereto shall vest in the State of California, and all franchises to build, construct or maintain any wharf, pier, marine ways, dry dock or ship yard, shall contain this provision therein; *provided*, that in fixing such value the franchise or privilege shall not be considered as of any value; *provided further*, that said commissioners shall fix the time when work shall be commenced upon any new structure and the time in which the same shall be completed, and if said structure shall not be completed within such time, or such additional time as the said commissioners shall give, then such right and franchise shall lapse and become void; *provided further*, that all franchises shall contain a provision to the effect that nothing therein contained shall be construed as permitting the erection or maintenance of any wharf, pier, marine ways, dry dock or ship yard, in such manner or in such place as to prevent or interfere with the erection and maintenance of a seawall in accordance with the plans heretofore adopted by said commissioners. The said commissioners are hereby authorized to grant to any person or railroad corporation authority to construct and maintain along and over the water front of the bay of San Diego, a railroad for a period

not exceeding fifty (50) years, upon such terms and conditions as said commissioners may provide; *provided*, that where such railroad is within the limits of any city, such grant shall be approved, ratified and confirmed by an ordinance of such city. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 323. **Am'd.** 1903, 56; 1905, 23.

§ 2607. **Salaries of commissioners, secretary and employé.** The monthly salaries of the officers shall be as follows: Each of three commissioners, twenty-five dollars; the secretary, who shall be elected by the commissioners from their own number, one hundred dollars, in addition to his salary as commissioner. The salaries and compensation of all other officers and employés, when appointed, shall be fixed by a majority of the board of harbor commissioners; *provided*, that in no event shall the state be liable for the salaries of the members of said board of commissioners, or of the secretary thereof, or for the salary or compensation of any officer or employé elected or appointed by said board, or upon any contract made or entered into by said board. And it is hereby expressly provided that said board of commissioners shall not create any liability or indebtedness against the state in any manner or form whatsoever, and any liability or indebtedness so created, or attempted to be created, shall be absolutely null and void. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 323. **Am'd.** 1891, 69; 1905, 25.

§ 2618. Supp. Cal. Rep. Cit. 141, 347; 144, 354.

§ 2619. Supp. Cal. Rep. Cit. 144, 354.

§ 2631. Supp. Cal. Rep. Cit. 143, 238; 143, 242.

§ 2643. Supp. Cal. Rep. Cit. Subd. 10—143, 241.

§ 2683. Supp. Cal. Rep. Cit. 139, 130.

§ 2690. Supp. Cal. Rep. Cit. 139, 130.

§ 2692. Supp. Cal. Rep. Cit. 129, 130; 129, 134; 129, 135.

§ 2978. **State board of health, appointment and term.** The state board of health shall consist of seven duly licensed

and practicing physicians of this state, appointed by the governor for the term of four years. En. March 12, 1872. Am'd. 1905, 398.

§ 2979. **Powers and duties of board.** The state board of health shall examine into the causes of communicable diseases in man and domestic animals occurring or likely to occur in this state.

It may quarantine or isolate and disinfect persons, animals, property and things of whatever nature, and houses, rooms, places, cities or localities, whenever in the judgment of said board or pending its meeting, whenever in the judgment of its executive officer such action shall be deemed necessary to protect or preserve the public health, and said board may destroy or cause to be destroyed, bedding, carpets, household goods, furnishings and materials, clothing, or animals, when in the judgment of said board or that of its executive officer such clothing, furnishings, bedding, goods, materials or animals are an imminent menace to the public health.

It may establish and maintain places of quarantine or isolation.

It shall have sanitary control of all public buildings or places owned, leased or controlled by the state, and no officer or person having charge of the erection of any public building owned or controlled by the state shall proceed with the construction thereof until the state board of health shall, in writing, have approved the plans and specifications therefor, in so far as the same may, in any way, affect the sanitation thereof.

It shall cause special investigation of the sources of mortality and the effects of localities, employments, conditions and circumstances on the public health, the preparation and sale of drugs and food and the adulteration thereof.

They must perform such duties as are or may be required by law for the detection and prevention of the adulteration of articles used for food or drink, and for the punishment of persons guilty of violation of any law providing against such adulteration.

It shall examine and have power to prevent the pollution of sources of public domestic water and ice supply.

It shall have power to prepare or purchase and distribute at cost anti-toxins, vaccine and other approved serums and lymphs.

It shall maintain a bureau of vital statistics under the supervision of its executive officer, where shall be collected and recorded all births, marriages and deaths, burials and cremations within the state. These statistics together with the number of cases of communicable diseases, and such further comparative statistics and information as may be deemed of value to scientists, the medical profession, the general public and aid in the maintenance of good health conditions may be published by the board in such manner and at such times as it may deem proper.

It shall have power to prescribe and enforce regulations for the embalming, cremation, burial, disinterment and transportation of the dead.

It shall have power to prescribe the form of certificates of birth and death, and of permits for burial, disinterment, cremation and transportation of the dead, and provide measures for their observance.

It shall have power to abate public nuisances. It may advise all local health authorities, and, when in its judgment the public health is menaced it shall control and regulate their action.

It shall have general power of inspection, examination, quarantine and disinfection within the state, *provided*, that this act shall in no wise conflict with the enforcement of the national quarantine laws.

It shall have power to commence and maintain all proper and necessary actions and proceedings for the enforcement of its regulations and for the protection and preservation of the public health and to defend all actions and proceedings involving its powers and duties and in all such actions or proceedings it shall sue and be sued under the name of the state board of health.

It shall have power to adopt and enforce rules and regulations for the execution of its duties under this section.

It shall at each biennial session of the legislature make a report with such suggestions as to legislative action as it deems proper. En. March 12, 1872. Am'd. 1905, 398.

§ 2982. **Secretary of board. Salary. Duties.** The secretary of the state board of health shall receive an annual salary of $3000.00 and necessary expenses incurred in the performance of his duties. He shall enforce all orders and regulations of the state board of health, and shall vigilantly observe sanitary conditions throughout the state, and take all

necessary precautions to protect it in its sanitary relations with other states and countries.

He shall keep an accurate record of the proceedings of the state board of health and of his own acts, and shall file a written report of the same at each regular meeting. En. March 12, 1872. Am'd. 1905, 399.

§ 2983. En. March 12, 1872. Rep. 1905, 399.

§ 2984. **Local boards of health to enforce rules made by state board of health; to make monthly reports to state board.** It shall be the duty of the board of health of each municipality and incorporated town within this state, and of every chief executive health officer thereof, where there is no municipal or town board of health, to enforce within such municipality and incorporated town all orders, rules and regulations concerning health and quarantine prescribed or directed by the state board of health; and it shall be the duty of such board of health, or chief executive health officer to report in writing to the state board of health on or before the fifth day of each month all infectious, contagious and communicable diseases in man or beast which shall come to their or his knowledge, upon blanks furnished by the state board of health. Said board of health, or chief executive health officer, where there is no board of health, in cases of local epidemic of disease shall report to the state board of health all facts concerning the disease and the measures taken to prevent or abate its spread, infection or contagion. Said board of health, or chief executive health officer where there is no board of health, shall report to the state board of health all violations of the state health laws, and of the laws relating to the registration of marriages, births and deaths, which shall come to their or his knowledge. En. Stats. 1905, 84.

§ 3074. **Bureau of vital statistics; state registrar, duty of.** The state board of health shall maintain, at the city of Sacramento, a bureau of vital statistics for the complete and proper registration of births, marriages and deaths, for legal, sanitary and statistical purposes, which bureau shall be under the supervision of the secretary of the state board of health, who shall be ex-officio state registrar of vital statistics, and whose duty it shall be, after consultation with the state board of health, to promulgate and enforce

all necessary rules and regulations that may be required to carry out the provisions of this chapter. En. March 12, 1872. **Am'd.** 1877-8, 60; 1905, 103.

§ 3075. **Statistician, appointment of; term and salary; assistants.** The state board of health shall appoint a competent statistician to assist the state registrar of vital statistics and such clerical and professional assistants as may be required for the proper discharge of the duties of said registrar. Said statistician shall also be an assistant to the secretary of the state board of health.

The statistician so appointed shall hold office at the pleasure of the board and shall receive an annual salary of eighteen hundred dollars payable out of the general fund of the state from money not otherwise appropriated at the time and in the manner in which state officers are paid.

The compensation for clerical and professional assistants shall be fixed by the board and shall be payable from its fund for contingent expenses provided in the general appropriation act. En. March 12, 1872. **Am'd.** 1905, 104.

§ 3076. **Registry of marriages performed.** All persons who perform the marriage ceremony in this state shall within three days after the ceremony file with the county recorder a certificate of registry of the marriage performed by them in such form as may be prescribed by the state registrar which shall contain among other matters as near as can be ascertained, the place and date of marriage, sex, race, color, age, name and surname, birthplace, residence of the parties married, number of marriage and condition of each, whether single, widowed, or divorced, the occupation of the parties, maiden name of the female, if previously married, the names and birthplace of the parents of each and the maiden name of the mother of each. En. March 12, 1872. **Am'd.** 1873-4, 42; 1905, 104.

§ 3077. **Registry of births.** Physicians, midwives, nurses and other persons assisting at a birth shall return in writing within five days thereafter to the county recorder of the county where such birth takes places in such form as may be prescribed by the state registrar a certificate of registry of such birth which shall contain among other matters, the time and place of such birth, name, sex, race and color of the child, the name, residence, age, birthplace and occupa-

tion of the parents and the maiden name of the mother, and whether born in or out of wedlock, and such other information as may be required by the state registrar; *provided, however*, that in cities having a freeholders charter the health officer shall act as local registrar and perform all the duties thereof. In case the child is not named the recorder or registrar of such locality shall deliver to such parent, next of kin, physician, midwife or other person furnishing such certificate of birth a supplementary blank for report of given name, which shall be filled out and returned as soon as the child shall be named.

In case there shall be no physician, midwife, or nurse attending at such birth, then, it shall be the duty of the parents of any child born in this state (and if there be no parent alive, then the next of kin of said child) within ten days after such birth to report in writing to the recorder of the county or health officer of cities having a freeholders charter where such birth takes place, in such form as may be prescribed by the state registrar, the date, place and residence, name, sex, race, and color of such child, and the names, residence, birthplace and age of the parents, their occupations, and the maiden name of the mother, and whether born in or out of wedlock, and such other information required by the state registrar. En. March 12, 1872. Am'd. 1877-8, 60; 1905, 104.

§ 3078. **Duties of certain officers.** It shall be the duty of every county recorder to receive without fee or charge each certificate of registry of marriage and birth; *provided, however*, that in cities having a freeholders charter the health officer shall act as local registrar for births, and shall receive, without fee or charge, each certificate of birth and enter the same in the same manner as provided for the county recorder; to enter the same in separate registers to be known as the "Register of Marriages," and the "Register of Births," in separate columns, properly headed, the various facts contained in the certificates and the name and official or clerical position of the person making the report. The recorder or health officer must carefully examine each report, and register the same marriage, or birth but once, although it may be reported by different persons.

The certificates shall be numbered by him and entered in the order in which they are reported to him.

On or before the fifth day of each month each recorder, or health officer, shall transmit by U. S. mail, carefully inclosed

in appropriate envelopes or wrappers, addressed to the state registrar at Sacramento, or shall personally deliver to him at his office in Sacramento, on or before the fifth day of each month, the original certificates of births and marriages filed with him during the preceding month, and shall accompany said certificates with a brief statement of the number of such certificates, and the dates of their receipt. The state registrar shall thereupon file said original certificates of marriage and births, and cause the same to be separately and systematically indexed. En. March 12, 1872. **Am'd.** 1905, 105.

§ 3079. **Fee of recorder and health officer.** For their services as required by section 3078 of this code, county recorders, or health officers of cities having a freeholders charter, shall, in addition to their compensation for the other duties of their office, be allowed by the board of supervisors, ten cents for each name registered and reported to the state registrar, which sum shall be paid out of the general fund of the county upon warrants issued quarterly and signed by the county auditor and approved by the state registrar, which warrants shall specify the number of certificates of marriages and births properly registered and filed with the state registrar. En. March 12, 1872. **Am'd.** 1877-8, 60; 1905, 105.

§ 3080. **State registrar to prepare blank form and instructions.** The state registrar shall prepare a sample form and blank for use in registering, recording and preserving the reports of marriages and births, and shall prepare and issue such detailed instructions as may be required to secure the uniform observance of its provisions and the maintenance of a perfect system of registration, and no other forms of blanks shall be used than those prescribed by the state registrar.

Printed blanks in the form prescribed by the state registrar for the registration of marriages and births shall be furnished to each recorder or health officer by the board of supervisors of each county or city and county in sufficient quantities, and each recorder or health officer shall furnish without charge a sufficient number of copies to each applicant upon whom is imposed the duty of certifying to a marriage or birth. En. March 12, 1872. **Am'd.** 1905, 106.

§ 3081. **State registrar may require further information; deposition required when.** The state registrar shall carefully examine the certificates of marriages and births received monthly from the county recorders or health officers, and if any such are incomplete or unsatisfactory, he shall require such further information to be furnished as may be necessary to make the record satisfactory.

All physicians, clergymen, judges, midwives, nurses, parents, or other informants upon whom the duty is imposed of certifying to marriages or births, and all other persons having knowledge of the facts, are required to furnish such information as they may possess regarding any marriage or birth upon demand of the state registrar, in person by mail or through the local recorder.

Whenever it may be alleged that the facts are not correctly stated in any certificate of marriage or birth theretofore registered, the county recorder shall require a deposition under oath to be made by the person asserting the fact, to be supported by the depositions of two or more credible persons having knowledge of the facts, setting forth the change necessary to make the record correct. Having received such depositions, he shall file them and shall then draw a line through the incorrect statement or statements in the certificate, without erasing them, and make the necessary corrections, noting on the margin of the certificate his authority for so doing, and transmit the deposition, attached to the original certificate, when making his regular monthly returns to the state registrar. If the correction relates to a certificate previously returned to the state registrar, he shall transmit the deposition forthwith to the state registrar. If the correction is first made upon the original certificate on file in the state bureau of vital statistics, the state registrar shall immediately transmit a certified copy of the original certificate, corrected as above, to the county recorder, who shall thereupon substitute such certified copy for the copy of the certificate in his records. All such corrections and marginal notes referring to them shall be legibly written in ink, typewritten or printed. En. March 12, 1872. **Am'd.** 1877-8, 60; 1905, 106.

§ 3082. **Penalty for failure to perform duty.** Any officer or person upon whom a duty is imposed under this chapter who fails, neglects or refuses to perform any of the duties imposed upon him under this chapter or by the instructions

and directions of the state registrar shall be deemed guilty of a misdemeanor and upon conviction shall be punished in the same manner as other misdemeanors provided in the Penal Code. En. March 12, 1872. Am'd. 1905, 107.

§ 3083. **State registrar to furnish certified copy of records; certified copy prima facie evidence.** The state registrar shall upon request furnish any applicant a certified copy of the record of any marriage or birth registered under the provisions of this chapter, for the making and certification of which he shall be entitled to a fee of fifty cents to be paid by the applicant. Any such copy of the record of a marriage or birth when properly certified by the state registrar to be a true copy thereof shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records when no certified copy is made, the state registrar shall be entitled to a fee of fifty cents for each hour or fractional hour of time of search to be paid by the applicant. And the state registrar shall keep a true and correct account of all fees by him received under these provisions and shall deposit all fees with the state treasurer. En. Stats. 1877-8, 61. Am'd. 1905, 107.

§ 3084. En. Stats. 1885, 55. Am'd. 1889, 36. Rep. 1905, 107.

§ 3167. Supp. Cal. Rep. Cit. 141, 685.

§ 3168. Supp. Cal. Rep. Cit. 141, 685.

§ 3169. Supp. Cal. Rep. Cit. 141, 685.

§ 3170. Supp. Cal. Rep. Cit. 141, 685.

§ 3171. Supp. Cal. Rep. Cit. 141, 685; 145, 112.

§ 3172. Supp. Cal. Rep. Cit. 141, 685.

§ 3344. Supp. Cal. Rep. Cit. 142, 617; 142, 619.

§ 3366. Supp. Cal. Rep. Cit. 141, 206; 141, 207; 141, 213; 143, 554; 143, 555; 143, 557; 143, 559; 143, 560; 143, 566; 143, 572; 143, 573.

§ 3417. Supp. Cal. Rep. Cit. 143, 74.

§ 3426. Supp. Cal. Rep. Cit. 142, 449.

§ 3441. Supp. Cal. Rep. Cit. 143, 72.

§ 3445. Supp. Cal. Rep. Cit. 143, 73.

§ 3446. **Reclamation districts, petition for formation of.** Whenever the holders of title or evidence of title representing one-half or more of any body of swamp and overflowed, salt marsh, or tide lands, or other lands subject to flood or overflow, susceptible of one mode of reclamation, desire to reclaim the same, they may present to the board of supervisors of the county in which the lands, or the greater part thereof are situated at a regular meeting of the board, a petition, setting forth that they propose to form a district for the reclamation of the same, a description of the lands by legal subdivisions or other boundaries, the county in which they are situated, the number of acres in the proposed districts, and in each tract, with the names (if known) of the owners thereof, and designating as unsold any lands not reduced to private ownership. En. March 12, 1872. **Am'd.** 1873-4, 45; 1905, 70.

Supp. Cal. Rep. Cit. 143, 329; 144, 211.

§ 3447. Supp. Cal. Rep. Cit. 144, 211.

§ 3453. Supp. Cal. Rep. Cit. 144, 643; 144, 644; 144, 645; 144, 647.

§ 3457. **Reclamation districts; warrants, presentation of; registration of; when paid; time extended; actions based upon warrant.** The warrants drawn by the trustees must, after they are approved by the board of supervisors, be presented to the treasurer of the county, and if they are not paid on presentation, such indorsement must be made thereon, and they must be registered and bear interest from the date of presentation; but said warrants are, and shall be considered as contracts in writing for the payment of money, and the period prescribed for the commencement of an action based upon said reclamation warrants or connected therewith, is, and shall be the term of four years

from the date of their issuance. No warrant shall be paid or received on an assessment, except within four years after the date of its issuance. The board of trustees and the treasurer must cancel all warrants not paid or received on assessment within four years after the date of issuance; *provided*, that any warrant not paid or received on assessment within four years after its issuance may, before the expiration of such four years, upon the demand of the owner or holder, be extended for a like period of four years upon the presentation of the same to the board of trustees of the district, such extension being indorsed thereon by said board and a record thereof filed with the treasurer. In case an action or proceeding based upon any warrant, or connected therewith, be commenced within four years after the issuance of such warrant and final judgment obtained in favor of the holder or owner thereof, such warrant shall be paid or received on assessment the same as if it had been paid or received on assessment before the expiration of said four years from the date of its issuance. **En. March 12, 1872. Am'd. 1873-4, 47; 1905, 69.**

§ 3461. Reclamation districts; list must contain, what. The list must contain:

1. A description by legal subdivisions, swamp land surveys, or natural boundaries of each tract assessed.
2. The number of acres in each tract.
3. The names of the owners of each tract, if known; and if unknown, that fact; but no mistake in the name of the owner, or supposed owner of the property assessed shall render the assessment thereof invalid.
4. The amount of the charge assessed against each tract.

En. March 12, 1872. Am'd. 1873-4, 49; 1905, 56.

§ 3463. Reclamation districts; lien acquired by filing list; list prima facie evidence. From and after the filing of the list, or certified copy thereof, the charges assessed upon any tract of land within the county constitute a lien thereon, and in any action to enforce said lien or to determine its validity, said list, duly executed by said commissioners, or a certified copy thereof shall be prima facie evidence of the matters therein contained, and that said commissioners were duly appointed and qualified, as required by law, and that they did view and assess upon the lands set forth in said lists the charges therein contained, and that said

charges are in proportion to the whole expense and the benefits of which will result from the works of reclamation for which said assessment is so levied. En. March 12, 1872. Am'd. 1905, 55.

§ 3466. **Collection of unpaid assessment in reclamation districts.** At the end of thirty days, the treasurer must return the lists to the board of trustees of the district, and all unpaid assessments shall bear legal interest from the date of the return of the lists to said board, and shall thereafter be collected and paid in separate installments, of such amounts, and at such times, respectively, as the board, from time to time, in its discretion, may, by order entered in its minutes, direct; and a cause of action for the collection of any such installment shall accrue at the expiration of twenty days from the date of the order directing its payment; *provided*, that if any such installment shall remain unpaid at the expiration of said twenty days, then the whole of the assessment against the land owned by the person failing to pay such installment shall become due and payable at once, and may, in the discretion of the board, be collected immediately, in one and the same action. The board of trustees of the district must commence actions for the collection of such delinquent installments, and delinquent assessments, with interest thereon, and costs, and for the enforcement of the lien thereof on the land assessed, in the superior court of the county in which the land, or some portion of it, is situated, in which action all persons claiming any interest in said land upon which said assessment is levied, and any person necessary to a complete determination of the action, may be joined as defendants in said action. No person holding a conveyance from or under the person to whom the land was assessed, or having a lien thereon, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, need be made a party to such action, and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been a party to the action. Notice of the pendency of such action may be filed in the office of the county recorder of the county in which the land affected by said action is situated, in the same manner and with like effect as in other actions affecting real property. When the name of

any person, properly a defendant in any such action, as herein provided, is unknown to the said trustees, such person may be joined in said action and be sued by a fictitious name, and if his true name is thereafter, and before final judgment, discovered or ascertained the same may be, thereafter, substituted for such fictitious name. Service of the summons in such action shall be made in the same manner as is provided by law for the service or publication of summons in other actions. Assessments on several tracts may be included in the same action, if listed to the same persons, and causes of action on separate assessments on the same land may be included in the same action. In all actions for the collection of delinquent assessments, the court may decree and adjudge a lien against each tract for the amount assessed against the same, and may order it to be sold, on execution or decree, as in other cases of sale of real estate on execution. The judgment or decree must direct that the sale be made for gold and silver coin of the United States. The board of trustees must pay the moneys collected to the county treasurer, who must place the same to the credit of the district. En. March 12, 1872. Am'd. 1873-4, 48; 1880, 108; 1891, 288; 1905, 62.

§ 3476. Supp. Cal. Rep. Cit. 142, 448; 142, 449.

§ 3477. Supp. Cal. Rep. Cit. 142, 448; 142, 451; 143, 329; 143, 330.

§ 3478. Supp. Cal. Rep. Cit. 144, 644.

§ 3481. Supp. Cal. Rep. Cit. 139, 465; 142, 14.

§ 3491. Supp. Cal. Rep. Cit. 143, 329.

§ 3549. Supp. Cal. Rep. Cit. 144, 423; 144, 424.

§ 3550. Supp. Cal. Rep. Cit. 144, 425.

§ 3551. Supp. Cal. Rep. Cit. 144, 425.

§ 3553. Supp. Cal. Rep. Cit. 145, 50; 145, 51; 145, 53.

§ 3574. Supp. Cal. Rep. Cit. 139, 626.

§ 3608. Supp. Cal. Rep. Cit. 142, 282; 142, 284; 142, 285; 142, 286.

§ 3617. **Definition of terms and words.** Whenever the terms mentioned in this section are employed in this act, they are employed in the senses hereafter affixed to them:

First—The term "property" includes moneys, credits, bonds (except of railroad or quasi-public corporations), stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership.

Second—The term "real estate" includes:

1. The possession of, claim to, ownership of, or right to the possession of land.

2. All mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations, growing or being on the lands of the United States, and all rights and privileges appertaining thereto.

3. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, when land is pledged for the payment and discharge thereof, shall, for the purpose of assessment and taxation, be deemed and treated as an interest in the land so pledged.

4. Improvements.

Third—The term "improvements" includes:

1. All buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land, except telephone and telegraph lines.

2. All fruit, nut-bearing, or ornamental trees and vines, not of natural growth, excepting fruit and nut-bearing trees under four years of age, and grape vines under three years of age.

3. Alfalfa, after the first year's planting.

Fourth—The term "personal property" includes everything which is the subject of ownership, not included within the meaning of the term "real estate" or "improvements."

Fifth—The terms "value" and "full cash value" mean the amount at which the property would be taken in payment of a just debt from a solvent debtor.

Sixth—The term "credits" means those solvent debts, not secured by mortgage or trust deed, owing to the person, firm, corporation, or association assessed. The term "debt" means those unsecured liabilities owing by the person, firm, corporation, or association assessed to bona fide residents

of this state, or firms, associations or corporations doing business therein; but credits, claims, debts, and demands due, owing or accruing for or on account of money deposited with savings and loan corporations, shall, for the purpose of taxation, be deemed and treated as an interest in the property of such corporation, and shall not be assessed to the creditor or owner thereof. En. March 12, 1872. Am'd. 1873-4, 143; 1875-6, 58; 1877-8, 64; 1880, 5; 1881, 56; 1889, 203; 1895, 306; 1905, 192.

Supp. Cal. Rep. Cit. Subd. 1—142, 290; Subd. 2—144, 153. Subd. 3—144, 437. Subd. 5—142, 291.

§ 3627. Supp. Cal. Rep. Cit. 145, 55; 145, 58.

§ 3628. Supp. Cal. Rep. Cit. 139, 523; 143, 432.

§ 3634. Supp. Cal. Rep. Cit. 144, 154.

§ 3640. Supp. Cal. Rep. Cit. 142, 234; 142, 285.

§ 3650. **Property, how listed.** The assessor must prepare an assessment book, with appropriate headings as directed by the state board of equalization, in which must be listed all property within the county, under the appropriate head.

1. The name and post-office address, if known, of the person to whom the property is assessed.

2. Land, by township, range, section, or fractional section; and when such land is not a congressional division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, not exceeding in each and every tract six hundred and forty acres, locality, and the improvements thereon. When any tract of land is situated in two or more school, road, or other revenue districts of the county, the part in each township or district must be separately assessed. The improvements to be assessed against the particular section, tract, or lot of land upon which they are located.

3. City and town lots, naming the city or town, and the number of the lot and block, according to the system of numbering in such city or town, and the improvements thereon.

4. All personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment.

5. The cash value of real estate, other than city or town lots.

6. The cash value of improvements on such real estate.

7. The cash value of city and town lots.

8. The cash value of improvements on city and town lots.

9. The cash value of improvements on real estate assessed to persons other than the owners of the real estate.

10. The cash value of all personal property, exclusive of money.

11. The amount of money.

12. The assessment of the franchise, roadway, roadbeds, rails, and rolling stock of any railroad, as apportioned to his county by the state board of equalization, and also such other apportionments of such franchises, roadways, roadbeds, rails, and rolling stock as may be made by such board, and furnished to him for the purpose of taxation in any district in his county. Taxable improvements owned by any person, firm, association, or corporation, located upon land exempt from taxation, shall, as to the manner of assessment, be assessed as other real-estate upon the assessment book. No value shall, however, be assessed against the exempt land, nor under any circumstances shall the land be charged with or become responsible for the assessment made against any taxable improvements located thereon.

13. The school, road, and other revenue districts in which each piece of property assessed is situated.

14. The total value of all property.

15. When any property, except that owned by a railroad or other quasi-public corporation, is subject to or affected by a mortgage, deed of trust, contract, or other obligation by which a debt is secured, he must enter, in the proper column, the value of such security, and deduct the same. In entering assessments containing solvent credits subject to deductions, as provided in section three thousand six hundred and twenty-eight of this code, he must enter in the proper column the value of the debts entitled to exemption and deduct the same. In making the deductions from the total value of property assessed, as above directed, he must enter the remainder in the column provided for the total value of all property for taxation. Each franchise must be entered in the assessment book without combining the same with other property or the valuation thereof.

16. The figure (1), in separate columns, opposite the name of every person liable to pay a poll tax.

17. Such other things as the state board of equalization may require. En. March 12, 1872. Am'd. 1875-6, 11; 1880, 10; 1881, 59. Rep. 1883, 72 (in part only). Am'd. 1895, 309; 1905, 134.

Supp. Cal. Rep. Cit. 139, 99.

§ 3652. Supp. Cal. Rep. Cit. 139, 100.

§ 3669. **Certain taxes to be paid state treasurer.** Each corporation, person or association assessed by the state board of equalization must pay to the state treasurer, upon the order of the controller, as other moneys are required to be paid into the treasury, the state and county and city and county taxes each year levied upon the property so assessed to it or him by said board. Any corporation, person or association dissatisfied with the assessment made by the board, upon the payment of the taxes due upon the assessment complained of, and the percentage added, if to be added, on or before the first Monday in June, and the filing of notice with the controller of an intention to begin an action, may, not later than the first Monday in June, bring an action against the state treasurer for the recovery of the amount of taxes and percentage so paid to the treasurer, or any part thereof, and in the complaint may allege any fact tending to show the illegality of the tax, or of the assessment upon which the taxes are levied, in whole or in part. When any person, corporation or association has made payment of any of the taxes, penalties, percentages, or costs herein referred to, which have been subsequently adjudged illegal, and still remain in the hands of the state treasurer such person, corporation or association shall be entitled to a refund thereof, although the payment of such taxes, penalties, percentages and costs may not have been under protest, nor a notice filed with the controller of an intention to begin an action to recover the same, as hereinbefore provided. And in case of failure or refusal by the state treasurer to pay the same to such person, corporation or association upon its demand, an action may be brought against the state treasurer for the recovery of the amount of taxes and percentage so paid to the treasurer or any part thereof.

Whenever, under the provisions of this section, an action is commenced against the state treasurer, a copy of the complaint and of the summons must be served upon the treasurer within ten days after the complaint has been filed, and the treasurer has thirty days within which to demur or answer.

At the time the treasurer demurs or answers, he may demand that the action be tried in the superior court of the county of Sacramento. The attorney-general must defend the action. The provisions of the Code of Civil Procedure relating to pleadings, proofs, trials and appeals are applicable to the proceedings herein provided for. If the final judgment be against the treasurer, upon presentation of a certified copy of such judgment to the controller he shall draw his warrant upon the state treasurer, who must pay to the plaintiff the amount of the taxes so declared to have been illegally collected; and the cost of such action, audited by the board of examiners, must be paid out of any money in the general fund of the treasury, which is hereby appropriated and the controller may demand and receive from the county, or city and county interested, the proportion of such costs, or may deduct such proportion from any money then or to become due to said county, or city and county. Such action must be begun on or before the first Monday in June of the year succeeding the passage of this act in the case of taxes heretofore paid, and on or before the first Monday in June of the year succeeding the year in which the taxes were levied, and a failure to begin such action is deemed a waiver of the rights of action. En. Stats. 1883, 70. Am'd. 1891, 442; 1905, 823.

§ 3678. Supp. Cal. Rep. Cit. 141, 726; 145, 198.

§ 3682. Supp. Cal. Rep. Cit. 142, 563.

§ 3713. **Levy of taxes.** The state board of equalization must, for state purposes for the fifty-seventh and fifty-eighth fiscal years, fix such an ad valorem rate of taxation upon each one hundred dollars in value of taxable property in this state as, after allowing five per cent for delinquencies in and costs of collection of taxes, as provided in section three thousand six hundred and ninety-six of the Political Code, will raise for the fifty-seventh fiscal year:

First—For the general fund, four million dollars.

Second—For the school fund, two million eight hundred and fifty-one thousand seven hundred and eighty-six dollars.

Third—For the high school fund, two hundred and seventeen thousand three hundred and thirty-five dollars.

Fourth—For the interest and sinking fund, one hundred and forty-one thousand four hundred and thirty-five dollars.

And for the fifty-eighth fiscal year:

First—For the general fund, three million six hundred and eighty thousand dollars.

Second—For the school fund, two million eight hundred and fifty-one thousand seven hundred and eighty-six dollars.

Third—For the high school fund, two hundred and seventeen thousand three hundred and thirty-five dollars.

Fourth—For the interest and sinking fund, one hundred and forty-one thousand four hundred and thirty-five dollars. En. March 12, 1872. Am'd. 1871-2, 886; 1873-4, 160; 1875-6, 60; 1877-8, 67; 1880, 65; 1881, 123; 1885, 101; 1887, 151; 1889, 346; 1891, 470; 1893, 300; 1895, 161; 1897, 247; 1899, 131; 1901, 595; 1903, 335; 1905, 252.

Supp. Cal. Rep. Cit. 142, 14.

§ 3716. Supp. Cal. Rep. Cit. 145, 58; 145, 60.

§ 3762. Supp. Cal. Rep. Cit. 142, 564.

§ 3769*a*. **Land sold for taxes encumbered by trust deed or mortgage.** Whenever land to be sold for taxes is encumbered by trust deed or mortgage and the taxes for which the land is to be sold is for the value over and above the encumbrance, as the said encumbrance is shown by and upon the assessment roll in the tax collector's office, the tax collector shall at least ten days before the date of sale mail a copy of the publication required in sections 3764 and 3765, 3766 and 3767 of this code to the mortgagee named in any such mortgage and the trustees named in any such trust deed. When the addresses of the mortgagee named in any mortgage and the trustees named in any trust deed are unknown to the tax collector, he shall mail said notices in said names to the county seat of the said county. The tax collector shall file a copy of said notice with an affidavit of time and place of mailing same with the county recorder and county clerk respectively. En. Stats. 1905, 550.

§ 3786. Supp. Cal. Rep. Cit. 139, 524.

§ 3787. Supp. Cal. Rep. Cit. 139, 524.

§ 3804. **Taxes illegally collected, refunding of.** Any taxes, penalties or costs thereon heretofore or hereafter paid more than once, or heretofore or hereafter erroneously or illegally collected, or any taxes heretofore or hereafter paid upon an assessment in excess of the actual cash value of the property so assessed, by reason of a clerical error of the assessor, as to the excess in such cases, or any tax heretofore or hereafter paid upon an erroneous assessment of improvements on real estate not in fact in existence when said tax became a lien, may, by order of the board of supervisors, be refunded by the county treasurer. Whenever any payment shall have been made to the state treasurer, by the county treasurer, as provided by section 3865 and section 3866 of this code, and it shall afterwards appear to the satisfaction of the board of supervisors that a portion of the money so paid should be refunded as herein provided, said board of supervisors may refund such portion of the said taxes, penalties and costs so paid to the said treasurer to the person entitled to the same out of the general fund, and upon the rendering of the report required by section 3668 of this code the auditor shall certify to the controller, in such form as the controller may prescribe, all amounts so refunded, and in the next settlement of the county treasurer with the state the controller, if satisfied of the legality of such refunding, by the said board, shall give such treasurer credit for the state's portion of the amounts so refunded as prescribed in section 3871 of this code; *provided further*, that where the taxes, penalties and costs herein referred to are levied in behalf of any school district, municipality or other public or municipal corporation, and said corporation has money in the county treasury, said order to refund shall not be made except upon a certified copy of an order of the governing body of such corporation authorizing said repayment, in which case the amount refunded shall be paid by the county treasurer from the county fund of such school district, or from the appropriate fund of such corporation; *provided further, however*, that no order of the board of supervisors to refund taxes, penalties or costs shall be made except upon a verified claim therefor filed

within three years after the making of the payment sought to be refunded. En. March 12, 1872. Am'd. 1889, 347; 1895, 327; 1901, 648; 1903, 38.

Supp. Cal. Rep. Cit. 142, 661; 142, 662; 142, 664; 142, 665; 144, 89; 144, 90.

§ 3805a. Public lands upon which final payment has not been made; if land has been sold to state for taxes, cancellation of assessment. Whenever the possessory interest in land belonging to the United States, or land upon which final payment had not, at the time of assessment, been made to the United States, or land of this state upon which the full purchase price has not or had not been made to the state, has been, or may hereafter be, assessed and sold to the state for delinquent state, county or local district taxes, or whenever the taxes levied against any such possessory interests in lands, or against any such state lands, have not been paid, the board of supervisors shall, upon verified application of the owner of the land, by an order entered upon its minutes, direct the auditor to cancel such assessment; and if the property under such assessment has been sold to the state, and a certificate of sale or deed thereon issued to the state, such order of the board shall further direct the recorder to cancel such certificate of sale and deed; *provided*, that no order to cancel any such assessments, certificates of sale or deeds shall be made where the person or persons to whom such land or possessory interests, or state lands, his or their successors or assigns, have, after such assessment, obtained from the United States or this state a patent or the absolute title to said lands or retain any interest therein, or been in possession of the premises, *and provided* that no order to cancel any assessment shall be made whereby the person or persons, his or their successors or assigns shall be relieved from paying the taxes upon said property for the full time he or they have had the possession of said property, no matter in whose name said property was or had been assessed. Before an order to cancel such assessment, certificate of sale or deed shall be granted, the applicant shall file with the board a certificate of the register of the United States land office, or of the state land office, showing that the person or persons to whom such assessment was made, his or their successors and assigns, never received a patent or otherwise acquired title to said lands. Upon ef-

fecting the cancellations provided for in this and the preceding section, all assessments, certificates of sale and deeds the subject of such cancellation shall be null and void. En. Stats. 1901, 650. Am'd. 1905, 90.

§ 3817. **Redemption by heirs, executors et al.** In all cases where real estate has been sold, or may hereafter be sold for delinquent taxes to the state, and the state has not disposed of the same, the person whose estate has been, or may hereafter be sold, his heirs, executors, administrators, or other successors in interest, shall, at any time after the same has been sold to the state, and before the state shall have disposed of the same, have the right to redeem such real estate by paying to the county treasurer of the county wherein the real estate may be situated, the amount of taxes, penalties and costs due thereon at the time of said sale, with interest on the aggregate amount of said taxes, at the rate of seven per cent per annum; and also all taxes that were a lien upon said real estate at the time said taxes became delinquent; and also all unpaid taxes of every description assessed against the property for each year since the sale; or, if not so assessed, then upon the value of the property as assessed in the year nearest the time of such redemption, with interest from the first day of July following each of said years, respectively at the same rate, to the time of redemption; and also all costs and expenses of such redemption, and penalties as follows, to wit: Ten per cent if redeemed within six months from the date of sale; twenty per cent, if redeemed within one year therefrom; thirty per cent if redeemed within two years therefrom; forty per cent if redeemed within three years therefrom; forty-five per cent if redeemed within four years therefrom; and fifty per cent, if redeemed within five or any greater number of years therefrom. The penalty shall be computed upon the amount of each year's taxes in like manner, reckoning from the time when the lands would have been sold for the taxes of that year, if there had been no previous sale thereof. The county auditor shall, on the application of the person desiring to redeem, make an estimate of the amount to be paid, and shall give him triplicate certificates of the amount, specifying the several amounts thereof, which certificates shall be delivered to the county treasurer, together with the money, and the county treasurer shall give triplicate receipts, written or indorsed upon said certificates, to the redemptioner, who shall de-

liver one of said receipts to the state controller, and one to the county auditor, taking their receipts therefor. The county treasurer shall settle for the moneys received as for other state and county moneys. Upon the payment of the money specified in said certificate, and the giving of the receipts aforesaid by the treasurer, controller, and auditor, any deed or certificate of sale that may have been made to the state shall become null and void, and all right, title, and interest acquired by the state, under and by virtue of the tax sale, shall cease and determine. Upon consummation of the redemption, the auditor shall report same to the recorder, whereupon the recorder shall, without payment of fee, note on the margin of the certificate of sale, or deed, if issued, the fact of such redemption, date, and by whom redeemed. The receipts of the county treasurer, controller, and county auditor may be recorded in the recorder's office of the county in which said real estate is situated, in the book of deeds, and the record thereof shall have the same effect as that of a deed of reconveyance of the interest conveyed by such deed or certificate of sale. This act shall apply to state lands sold by the state when the full amount of the purchase price of one dollar and twenty-five cents per acre has not been paid to the state therefor, except when the deed to the state, provided for in section three thousand seven hundred and eighty-five, has been filed with the surveyor-general. En. Stats. 1883, 23. **Am'd.** 1895, 22; 1895, 329; 1897, 433; 1901, 651; 1905, 499.

§ 3819. Supp. Cal. Rep. Cit. 142, 201; 142, 661; 142, 664; 142, 665.

§ 3820. Supp. Cal. Rep. Cit. 144, 154.

§ 3821. **Taxes on personal property, collection made by seizure and sale.** In the case provided for in the preceding section, at the time of making the assessment, or at any time before the first Monday of August following the assessment, the assessor may collect the taxes by seizure and sale of any personal property owned by the person against whom the tax is assessed, or if no personal property can be found, then the assessor may collect the taxes by seizure and sale of the right to the possession of, claim to or right to the possession of the land. En. March 12, 1872. **Am'd.** 1897, 435; 1905, 470.

§ 3829. Supp. Cal. Rep. Cit. 145, 425.

§ 3862. Supp. Cal. Rep. Cit. 145, 198.

§ 3885. Supp. Cal. Rep. Cit. 142, 564; 142, 565.

§ 3891. Supp. Cal. Rep. Cit. 143, 432.

§ 3897. **Sale of property sold to state for taxes.** Whenever the state shall become the owner of any property sold for taxes and the deed to the state has been filed with the controller as provided in section three thousand seven hundred and eighty-five, the controller may thereupon by a written authorization direct the tax collector of the county or city and county to sell the property or any part thereof as in his judgment he shall deem advisable in the manner following: He must give notice of such sale by first publishing a notice for at least three successive weeks in some newspaper published in the county or city and county, or if there be no newspaper published therein, then by posting a notice in three conspicuous places in the county or city and county, one of which shall be at the United States post-office nearest the land, in addition to a notice conspicuously posted on the land itself for the same period. Such notices must state specifically the place of and the day and hour of sale and shall contain a description of the property to be sold and shall also contain a detailed statement of all the delinquent taxes, penalties, costs and expenses up to the date of such sale and shall give the name of the person to whom the property was assessed for each year on which there may be delinquent taxes against said property or any part thereof and said notice shall also embody a copy of the authorization received from the controller. It shall be the duty of the tax collector to mail a copy of said notice, postage thereon prepaid, to the party to whom the land was last assessed next before the sale, if such address be known. At the time set for such sale, the tax collector must sell the property described in the controller's authorization and said notices, at public auction to the highest bidder for cash in lawful money of the United States; but no bid shall be received or accepted at such sale for less than the amount of all the taxes levied upon such property and all interests, costs, penalties and expenses up to the date of such sale; *provided, however,* that if the board of

supervisors of the county, or city and county, in which any such property is situate, shall, by resolution entered upon their minutes, declare that, in their judgment, the property so owned by the state, and particularly described in said resolution, is not at that time of value great enough that it can be sold by the state for a sum equal to the amount of all taxes levied upon said property, and all interests, costs and penalties and expenses up to the date of such sale, and that it would be to the best interest of the state to sell the said property for a sum to be stated in said resolution less than the sum above named upon receipt of a copy of said resolution, certified by the clerk of said board of supervisors, the state controller may thereupon, by written authorization, direct the tax collector of the county, or city and county, to sell the said property so described in said resolution for a sum not less than the sum stated in said resolution, together with the expenses of sale. The expense of giving the notice herein required shall be a charge against the county. En. Stats. 1873-4, 158. Am'd. 1895, 334; 1897, 436; 1905, 81.

§ 3898. **Distribution of money received from sale; tax collector to execute deed.** The moneys received from such sale shall be distributed as follows: The tax collector shall deduct the penalties, costs and other amounts received as expenses of such sale in such cases as the property so sold shall have been sold for a sum not less than the amount of all taxes levied thereon and all interests, costs and penalties up to the date of such sale, but where the property so sold shall have been sold for a sum less than said amount, the tax collector shall deduct only the amounts received as expenses attending such sale, and the balance shall be distributed between the state and the county, or city and county, in the proportion that the state rate bears to the county, or city and county, rate of taxation; said tax collector shall pay all amounts into the county treasury, and the treasurer shall account to the state for its portion in the settlement required by section three thousand eight hundred and sixty-five and section three thousand eight hundred and sixty-six. On receiving the amount bid, as prescribed in the preceding section, the tax collector must execute a deed to the purchaser, reciting the facts necessary to authorize such sale and conveyance, which deed shall convey all the interest of the state in and to such property, and shall be prima facie

evidence of all facts recited therein. En. Stats. 1873-4, 154. Am'd. 1895, 335; 1905, 32.

§ 3928. **Sacramento and San Joaquin counties, boundary line between established.** Beginning on the northern line of the county, at a point ten miles north of a point which was, on the thirtieth of March, eighteen hundred and fifty-seven, the mouth of the American river; thence easterly to the junction of the north and south forks of said river; thence up the principal channel of the south fork to a point one mile above Mormon island, so as to include said island in Sacramento county, forming the northeast corner; thence southerly to a point on the Cosumnes river, eight miles above the house of William Daylor; thence south to Dry creek, forming southeast corner; thence down said Dry creek to its entrance into Mokelumne river; thence down the Mokelumne river to a point where said river divides into east and west branches; thence down the west branch to its junction with the east branch; thence down said river to its junction with the San Joaquin river; thence down the San Joaquin river to the mouth of the Sacramento river, at the head of Suisun bay, forming southwest corner; thence up the Sacramento river to the mouth of Merritt slough; thence up said slough to the mouth of Sutter slough; thence up said Sutter slough to the Sacramento river; thence up the Sacramento river to a point west of the place of beginning, forming the northeast corner of Sacramento county; thence east to the place of beginning. County seat—Sacramento. En. March 12, 1872. Am'd. 1877-8, 70; 1905, 164.

§ 3938. Supp. Cal. Rep. Cit. 142, 52; 142, 54; 142, 55.

§ 3939. Supp. Cal. Rep. Cit. 142, 54; 142, 55.

§ 4080. **Boards of supervisors to provide for planting, etc., of shade trees.** The board, under such regulations as they may adopt, may provide for the purchase, planting, cultivation, care and preservation of not less than two hundred and fifty (250) shade and ornamental trees, each year, on the public roads and highways of the county, and the cost of such purchase, planting, cultivation, care, and preservation shall be charged to the same fund which was used in the acquisition and construction of the road along which

the trees are planted. En. March 12, 1872. Rep. 1880, 100. Am'd. 1905, 115.

The repealing act of 1880 was declared unconstitutional. See § 4000, Political Code, 1903, note.

§ 4101. Supp. Cal. Rep. Cit. 142, 588.

§ 4116. **County officers, office hours; auditor not to draw salary warrants until affidavit is filed monthly; affidavit of auditor.** Sheriffs, clerks, recorders, treasurers, and auditors must have their offices at the county seat, in the courthouse, hall of records, jail or other buildings, provided by the county through the board of supervisors, and keep them open for the transaction of business continuously from nine o'clock A. M. until five o'clock P. M. every day in the year except Sundays and holidays. And the words "transaction of business" as used herein shall be construed to mean that during the said hours named there shall be present in said office at least one person qualified and prepared to transact the business that may properly come into said office. The auditor shall not draw his warrant for the salary of any such officer for any month until the latter shall first have presented him with an affidavit setting forth that he has complied with the provisions of this section, and the making of a false affidavit by any of said officers shall subject the party making the same to prosecution for the crime of perjury and to be punished for the same. The affidavit required herein of the auditor shall be filed with the county clerk and be and remain a record of the office of said clerk; and the affidavits of the other officers required herein shall be filed with the county auditor and be and remain a record of his office, *provided* that if any of the officers named herein are absent from their office on official business they shall be excused from attendance at their said respective offices during the time they are so absent on such business, *and provided further*, that in all cases where any officer named herein has no regularly appointed deputy he shall be permitted to close his office during the hour from twelve o'clock noon to and until two o'clock P. M. The judges of the superior court must have chambers at the county seat and must establish such rules and hours for official business as may be necessary for the dispatch thereof. En. March 12, 1872. Am'd. 1880, 101; 1905, 246.

§ 4179. Supp. Cal. Rep. Cit. 144, 8.

§ 4180. Supp. Cal. Rep. Cit. 144, 8.

§ 4187. Supp. Cal. Rep. Cit. 144, 8.

§ 4191. Supp. Cal. Rep. Cit. 140, 5.

§ 4235. **County recorder, books and instruments to be recorded by.** He must, upon the payment of his fees for the same, record separately, in a fair hand or typewriting, in large and well-bound separate books, either sewed books or on insertable leaf, which when placed in the book cannot be removed:

1. Deeds, grants, transfers, and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, and leases which have been acknowledged or proved;
2. Mortgages of personal property;
3. Certificates of marriage and marriage contracts;
4. Wills admitted to probate;
5. Official bonds;
6. Notices of mechanics' liens;
7. Transcripts of judgments which by law of this state, or of the United States, are made liens upon real estate in this state;
8. Notices of attachments upon real estate;
9. Notices of the pendency of an action affecting real estate, the title thereto, or possession thereof;
10. Instruments describing or relating to the separate property of married women;
11. Notices of pre-emption claims;
12. Births and deaths; and,
13. Such other writings as are required or permitted by law to be recorded. En. March 12, 1872. **Am'd.** 1895, 53; 1905, 47.

§ 4247. **Recorder to return or destroy contracts, plans and specification, when.** After the expiration of two years from the date of filing in the recorder's office of notice of completion of any building or improvement, the contract, plans and specifications under which the work or improvement was performed may be returned by the recorder to the person filing the same unless the recorder has been

notified in writing to retain the same by some one claiming some interest under such contract or in the property affected thereby. If no such notice be given the recorder may, after the expiration of said two years, destroy such contract, plans and specifications. But in the cases of such contracts, plans and specifications as have been filed heretofore: two years after this section goes into effect, the recorder may destroy all such contracts, plans or specifications as may have been filed five years theretofore, and thereafter may continue to destroy all of them as soon as five years elapse from the dates when they were filed, unless they are returned to the party filing the same, or unless notice be given to retain them, as above provided. En. Stats. 1905, 8.

§ 4408. Supp. Cal. Rep. Cit. 143, 561.

PART IV.

TITLE V.

Title amended March 20, 1905. Stats. 1905, 406.

PUBLICATIONS BY STATE OFFICERS AND COMMISSIONERS, OR OTHER OFFICIALS, OR THE OFFICERS OF COURTS, COUNTIES, CITIES, CITIES AND COUNTIES, OR TOWNS, AND PUBLICATIONS REQUIRED TO BE GIVEN OR MADE BY LAW.

§ 4458. Publication and notices, how given or made.
§ 4459. Publication and notices, how printed.
§ 4460. Newspapers of general circulation defined.
§ 4461. Penalty.
§ 4462. Newspapers of general circulation, how character defined.

§ 4458. Publication and notices, how given or made. Whenever any publication, or notice by publication, or

official advertising is required to be given or made by the provisions of this code, the Civil Code, the Code of Civil Procedure, the Penal Code, or by any law of the state, by any officer now existing, or any hereafter created, in this state, or any political subdivision thereof, or by any officer of any court, or officer of a county, city, city and county, or town in this state, such publication, or notice by publication, or official advertising shall be given or made only in a newspaper of general circulation, where such a newspaper is published within the jurisdiction of such official. Where no newspaper of general circulation is published within the jurisdiction of such official, then such publication or notice by publication, or official advertising, shall be given or made in a newspaper of general circulation, published nearest thereto. En. Stats. 1903, 478. **Am'd.** 1905, 406.

Supp. Cal. Rep. Cit. 141, 333; 141, 334.

§ 4459. **Publication and notices, how printed.** All publications, or notices by publication, or official advertisements referred to in the preceding section, must be set in type not smaller than nonpareil, and must be preceded with words printed in black face type not smaller than nonpareil, describing or expressing in general terms, the purport or character of the notice intended to be given. En. Stats. 1903, 479. **Am'd.** 1905, 406.

Supp. Cal. Rep. Cit. 141, 332; 141, 333; 141, 334.

§ 4460. **Newspapers of general circulation defined.** A newspaper of general circulation is a newspaper published for the dissemination of local or telegraphic news and intelligence of a general character, having a bona fide subscription list of paying subscribers, and which shall have been established, printed and published at regular intervals, in the state, county, city, city and county, or town, where such publication, notice by publication, or official advertising is given or made, for at least one year preceding the date of such publication, notice or advertisement. A newspaper devoted to the interests, or published for the entertainment or instruction of a particular class, profession, trade, calling, race, or denomination, or for any number of such classes, professions, trades, callings, races or denominations when the avowed purpose is to entertain or instruct

such classes is not a newspaper of general circulation. En. Stats. 1905, 407.

§ 4461. **Penalty.** State officers or commissioners, or other officials, and the officers of counties, cities, cities and counties, or towns, who violate or disregard the provisions of sections 4458, 4459 and 4460 of this code, shall be responsible personally and on their official bonds for all damages occasioned thereby, together with one hundred dollars liquidated damages in each case, to be recovered in any court of competent jurisdiction by the person, association or corporation aggrieved or interested. En. Stats. 1905, 407.

§ 4462. **Newspapers of general circulation, how character defined.** Whenever a newspaper shall desire to have its standing as a newspaper of general circulation, as that term is defined in section 4460, ascertained and established, it may, at its option, by its publisher, manager, editor or attorney, file a verified petition in the superior court of the county, or city and county, in which it is established, printed and published, setting forth the facts which justify such action. The petition or the substance thereof shall be published for ten days in the newspaper petitioning, and if the court so directs, in some other newspaper, together with a notice that the petitioner intends on a certain day to apply for the order herein mentioned. Upon proof being made of the publication of such petition and notice, the court shall set the same for hearing, and at any time prior to or on the day so set, or prior to or on any day to which it may be continued, any person may appear and contest the petition. The court shall hear the proofs of the petitioner and contestant, if there be any, and shall within ten days thereafter render its decision and judgment and the clerk shall enter the same in the records of the court. The decision and judgment herein provided for may be vacated, modified or set aside by the court on its own motion, or on the motion of any person, whether a party to the original proceeding or not, upon a verified statement of facts, upon ten days' notice to the petitioner, and upon a satisfactory showing made to the court that such newspaper has ceased to be a newspaper of general circulation as that term is defined in section 4460; but all publications made in such newspaper during the period it was adjudged to be a news-

paper of general circulation shall be deemed and held valid and sufficient. Nothing contained in this section shall be held or construed to be obligatory or as requiring any newspaper to comply with its provisions in order to be in fact, or in law, a newspaper of general circulation, as that term is defined in Section 4460, but any newspaper may at its option, avail itself of the provisions of this section. En. Stats. 1905, 407.

§ 4468. Supp. Cal. Rep. Cit. 141, 121.

§ 4478. Supp. Cal. Rep. Cit. 142, 55.

§ 4479. Supp. Cal. Rep. Cit. 140, 404; 142, 55.

§ 4480. Supp. Cal. Rep. Cit. 143, 199; 144, 424.

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THE
POLITICAL CODE.

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OF THE

STATE OF CALIFORNIA,

AS ENACTED IN 1872, AND AMENDED UP TO AND INCLUDING 1903.

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Settlements with the controller and payments into the state treasury, chapter X, §§ 3865-3880.
Miscellaneous provisions, chapter XI, §§ 3881-3900.

PART IV.

OF THE GOVERNMENT OF COUNTIES, CITIES, AND TOWNS, §§ 3901-4459.

Of Counties, Title I, §§ 3901-3985.
County boundaries and county seats, chapter I, §§ 3901-3958.
General provisions relating to counties, chapter II, §§ 3969-3985.

The Government of Counties, Title II, §§ 4000-4347.
Counties as bodies corporate, chapter I, §§ 4000-4007.
The board of supervisors, chapter II, §§ 4022-4087.
County officers, chapter III, §§ 4101-4316.
Salaries and fees of office, chapter IV, §§ 4328-4334.
Other county charges, chapter V, §§ 4343-4347.

The Government of Cities, Title III, §§ 4354-4449.
Cities as bodies corporate, chapter I, §§ 4354-4374.
Executive powers, chapter II, §§ 4385-4393.

Legislative powers, chapter III, §§ 4403-4414.
Judicial powers, chapter IV, §§ 4424-4432.
Certain statutes relating to cities and towns and existing corporations continued, chapter V, § 4442.
Funding and refunding of city indebtedness, chapter VI, §§ 4445-4449.

Liability of Counties and Cities for Injury to Property by Mobs or Riots, Title IV, §§ 4452-4457.

Publications by State Officers and Commissioners, or the Officers of Counties, Cities, Cities and Counties, or Towns, Title V, §§ 4458, 4459.

PART V.

OF THE DEFINITION AND SOURCES OF LAW—EFFECT AND PUBLICATION OF THE CODES, AND THE EXPRESS REPEAL OF STATUTES, §§ 4466-4505.

Definition and Sources of the Law, Title I, §§ 4466-4468.

Effect of the Codes, Title II, §§ 4478-4484.

Publication of the Codes and Statutes Continued in Force, Title III, § 4494.

Express Repeal of Statutes, Title IV, §§ 4504, 4505.

APPENDIX.

PRELIMINARY PROVISIONS.

THE POLITICAL CODE

OF THE

STATE OF CALIFORNIA.

AN ACT

TO ESTABLISH A POLITICAL CODE.

[Approved March 12, 1872.]

The people of the state of California, represented in senate and assembly, do enact as follows:

TITLE OF THE ACT.

§ 1. This act shall be known as The Political Code of the state of California, and is divided into five parts, as follows:

Part I. Of the sovereignty and people of the state, and of the political rights and duties of all persons subject to its jurisdiction.

II. Of the chief political divisions, seat of government, and legal distances of the state.

III. Of the government of the state.

IV. Of the government of counties, cities and towns.

V. Of the definition and sources of law; the common law; the publication and effect of the codes; and the express repeal of statutes. En. March 12, 1872.

Mode of citing: Post, sec. 20.

THE POLITICAL CODE

OF THE

STATE OF CALIFORNIA.

PRELIMINARY PROVISIONS.

§ 2. When code takes effect.
§ 3. Not retroactive.
§ 4. Construction of the Political Code.
§ 5. Provisions similar to existing laws, how construed.
§ 6. Tenure of offices preserved.
§ 7. Construction of repeal as to certain offices
§ 8. Actions, etc., not affected by this code.
§ 9. Limitations shall continue to run.
§ 10. Holidays.
§ 11. Same.
§ 12. Computation of time.
§ 13. Certain acts not to be done on holidays.
§ 14. Seal defined.
§ 15. Joint authority.
§ 16. Words and phrases.
§ 17. Certain terms used in this code defined.
§ 18. Statutes, laws or rules inconsistent with code repealed.
§ 19. Certain statutes preserved.
§ 20. This act, how cited, etc.

§ 2. When code takes effect. This code takes effect at twelve o'clock, noon, of the first day of January, eighteen hundred and seventy-three. En. March 12, 1872.

Same provision: Sec. 2 of the other codes.

Existing enactments—and proceedings, how effected: Post, secs. 8, 18.

Effect of the codes: Post, secs. 3-19 inclusive, and secs. 4478-4484.

Publication of the codes: Post, sec. 4494

Operation of statutes: Post, secs. 323-330.

Promulgation of statutes: Post, secs. 318, 526-528.

§ 3. Not retroactive. No part of it is retroactive, unless expressly so declared. En. March 12, 1872.

Cal.Rep.Cit. 74, 555; 98, 438; 106, 680; 116, 522.

Same provision: Sec. 3 of the other codes.

Accrued rights—not affected: Post, secs. 8, 18.

Impairing vested rights: See post, sec. 8.

§ 4. Construction of the Political Code. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of this state respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed, with a view to effect its objects and to promote justice. En. March 12, 1872.

Cal.Rep.Cit. 49, 274; 105, 558; 132, 585.

Similar provision: Sec. 4 of the other codes.

§ 5. Provisions similar to existing laws, how construed. The provisions of this code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments. En. March 12, 1872.

Cal.Rep.Cit. 76, 636.

Similar provision: Sec. 5 of the other codes.

§ 6. Tenure of offices preserved. All persons who, at the time this code takes effect, hold office under any of the acts repealed, continue to hold the same according to the tenure thereof, except those officers which are not continued by one of the codes adopted at this session of the legislature, and excepting offices filled by appointment. En. March 12, 1872. Am'd. 1873-4, 3.

Cal.Rep.Cit. 49, 411.

Similar provision: Code Civ. Proc., sec. 6.

Offices not continued—by codes: Post, sec. 7.

§ 7. Construction of repeal as to certain offices. When any office is abolished by the repeal of any act, and such act is not in substance re-enacted or continued in either of the four codes, such office ceases at the time the codes take effect. En. March 12, 1872.

Same provision: Code Civ. Proc., sec. 7.

Repeals by implication: See post, sec. 18.

§ 8. Actions, etc., not affected by this code. No action or proceeding commenced before this code takes effect, and no right accrued, is affected by its provisions, but the proceedings therein must conform to the requirements of this code as far as applicable. En. March 12, 1872.

Similar provisions: Civ. Code, sec. 6; Code Civ. Proc., sec. 8; Pen. Code, sec. 6.

§ 9. Limitations shall continue to run. When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this code goes into effect, and the same or any limitation is prescribed in this code, the time which has already run shall be deemed part of the time prescribed as such limitation by this code. En. March 12, 1872. Am'd. 1873-4, 1.

Same provision: Code Civ. Proc., sec. 9.

Limitations of civil actions: See Code Civ. Proc., secs. 312-363.

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§ 10. Holidays. Holidays, within the meaning of this code, are every Sunday, the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the ninth day of September, the first Monday in September, the twenty-fifth day of December, every day on which an election is held throughout the state, and every day appointed by the president of the United States, or by the governor of this state, for a public fast, thanksgiving, or holiday. If the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the ninth day of September, or the twenty-fifth day of December fall upon a Sunday, the Monday following is a holiday. En. March 12, 1872. Am'd. 1880, 49; 1889, 47; 1893, 187; 1897, 13.

Similar provisions: Civ. Code, sec. 7; Code Civ. Proc., sec. 10.

§ 11. Same. If the first day of January, the twenty-second day of February, the fourth day of July, or the twenty-fifth day of December fall upon a Sunday, the Monday following is a holiday. En. March 12, 1872. Am'd. 1873-4, 2.

Similar provisions: Civ. Code, secs. 7, 8; Code Civ. Proc., secs. 10, 11.

Holidays, when counted: See sec. 13.

§ 12. Computation of time. The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded. En. March 12, 1872.

Cal.Rep.Cit. 114, 483; 131, 594.

Same provision: Civ. Code, sec. 10; Code Civ. Proc., sec. 12.

Time, how computed, and year, week, and day defined: See post, secs. 3255 et seq.

§ 13. **Certain acts not to be done on holidays.** Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed. En. March 12, 1872.

Cal.Rep.Cit. 114, 483; 136, 193.

Same provision: Civ. Code, sec. 11; Code Civ. Proc., sec. 13.

§ 14. **Seal defined.** When the seal of a court, public officer or person is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone as well as upon wax or a wafer affixed thereto. En. March 12, 1872.

Same provision: Code Civ. Proc., sec. 14.

Private writings—seals for: See Code Civ. Proc., secs. 1929-1934.

Abolition of distinction between sealed and unsealed instruments: See Civ. Code, sec. 1629; Code Civ. Proc., sec. 1932.

Impression of seal—sufficient: See Civ. Code, sec. 1628.

Seals of courts: See Code Civ. Proc., secs. 147-153.

§ 15. **Joint authority.** Words giving a joint authority to three or more public officers, or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority. En. March 12, 1872.

Cal.Rep.Cit. 54, 293; 105, 627; 105, 629.

Same provision: Civ. Code, sec. 12; Code Civ. Proc., sec. 15.

§ 16. **Words and phrases.** Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are

to be construed according to such peculiar and appropriate meaning or definition. En. March 12, 1872.

Same provisions: Civ. Code, sec. 13; Code Civ. Proc., sec. 16.

Words of a contract—how interpreted: See Civ. Code, sec. 1644.

Terms of a writing—how construed: See Code Civ. Proc., sec. 1861.

Technical words: See Civ. Code, sec. 1645.

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§ 17. Certain terms used in this code defined. Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration; every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose"; signature or subscription includes mark, when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness. The following words, also, have in this code the signification attached to them in this section, unless otherwise apparent from the context:

One—The word "property" includes both real and personal property.

Two—The words "real property" are coextensive with lands, tenements and hereditaments.

Three—The words "personal property" include money, goods, chattels, things in action, and evidences of debt.

Four—The word "month" means a calendar month, unless otherwise expressed.

Five—The word "will" includes codicils.

Six—The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer; and the word "process," a writ or summons issued in the course of judicial proceedings.

Seven—The word "vessel," when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place.

Eight—The term "peace officer" signifies any of the officers mentioned in section eight hundred and seventeen of the Penal Code.

Nine—The term "magistrate" signifies any one of the officers mentioned in section eight hundred and eight of the Penal Code.

Ten—The word "state," when applied to the different parts of the United States, includes the District of Columbia and the territories; and the words "United States" may include the district and territories. En. March 12, 1872. Am'd. 1873-4, 2.

Cal.Rep.Cit. 54, 35; 62, 116; 92, 614.

Similar provisions: Civ. Code, sec. 14; Code Civ. Proc., sec. 17; Pen. Code, sec. 7.

Words used in boundaries are defined in sections 3903 to 3907 of this code.

§ 18. Statutes, laws or rules inconsistent with code repealed. No statute, law, or rule is continued in force because it is consistent with the provisions of this code, on the same subject, but in all cases provided for by this code all statutes, laws, and rules heretofore in force in this state, whether consistent or not with the provisions of this code, unless expressly continued in force by it, are repealed and abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this code provided; nor does it affect any private statute not expressly repealed. En. March 12, 1872.

Cal.Rep.Cit. 49, 412; 70, 505; 70, 506; 70, 507; 74, 510.

Same provision: Civ. Code, sec. 20; Code Civ. Proc., sec. 18.

Repealing statutes—and repeals generally: Post, secs. 327-329, 4504, 4505.

Statutes continued in force: Post, sec. 19.

The repeal of a repealing act does not revive the original act: See post, sec. 328.

Vested rights: See sec. 8.

§ 19. Certain statutes preserved. Nothing in either of the four codes affects any of the provisions of the following statutes, but such statutes are recognized as continuing in force, notwithstanding the provisions of the

codes, except so far as they have been repealed or affected by subsequent laws:

1. All acts incorporating or chartering municipal corporations, and acts amending or supplementing such acts;

2. All acts consolidating cities and counties, and acts amending or supplementing such acts;

3. All acts for funding the state debt, or any part thereof, and for issuing state bonds, and acts amending or supplementing such acts;

4. All acts regulating and in relation to rodeos;

5. All acts in relation to judges of the plains;

6. All acts creating or regulating boards of water commissioners and overseers in the several townships or counties of the state;

7. All acts in relation to a branch state prison;

8. An act for the more effectual prevention of cruelty to animals, approved March thirtieth, eighteen hundred and sixty-eight;

9. An act for the suppression of Chinese houses of ill-fame, approved March thirty-first, eighteen hundred and sixty-six;

10. An act relating to the home of the inebriate of San Francisco, and to prescribe the powers and duties of the board of managers and the officers thereof, approved April first, eighteen hundred and seventy;

11. An act concerning marks and brands in the county of Siskiyou, approved March twentieth, eighteen hundred and sixty-six;

12. An act to prevent the destruction of fish in the waters of Bolinas Bay, in Marin County, approved March thirty-first, eighteen hundred and sixty-six;

13. An act concerning trout in Siskiyou County, approved April second, eighteen hundred and sixty-six;

14. An act to prevent the destruction of fish in Napa River and Sonoma Creek, approved January twenty-ninth, eighteen hundred and sixty-eight;

15. An act to prevent the destruction of fish and game in, upon, and around the waters of Lake Merritt, or Peralta, in the county of Alameda, approved March eighteenth, eighteen hundred and seventy;

16. An act to regulate salmon fisheries in Eel river, in Humboldt County, approved April eighteenth, eighteen hundred and fifty-nine;

17. An act for the better protection of stock-raisers in the counties of Fresno, Tulare, Monterey and Mariposa, approved March twentieth, eighteen hundred and sixty-six;

18. An act concerning oysters, approved April twenty-eighth, eighteen hundred and fifty-one;

19. An act concerning oyster-beds, approved April second, eighteen hundred and sixty-six;

20. An act concerning gas companies, approved April fourth, eighteen hundred and seventy;

21. An act to empower the board of supervisors of the several counties of the state to aid in the construction of a railroad in their respective counties, approved April fourth, eighteen hundred and seventy;

22. An act supplemental to the act mentioned in the preceding subdivision, approved April fourth, eighteen hundred and seventy;

23. All acts in relation to lawful fences, estrays, and the trespassing of animals upon private property;

24. An act for the relief of insolvent debtors and the protection of creditors, approved May fourth, eighteen hundred and sixty-two, and the acts amending and supplementing such act;

25. All acts in relation to taxation for local purposes;

26. All acts dividing counties into collection and assessment districts;

27. All acts allowing county or city and county officers to appoint deputies, clerks and subordinate officers, in so far as such acts authorize the appointment and fix the compensation of such deputies, clerks and subordinate officers. En. March 12, 1872.

Cal.Rep.Cit. 45, 695; 46, 481; 46, 483; 50, 118; 51, 297; 58, 565; 61, 207; 64, 234; 64, 238; 64, 240; 67, 593; 70, 505; 70, 506; 70, 507; 114, 562. Subd. 1—53, 572. Subd. 2—53, 572. Subd. 23—79, 320. Subd. 25—53, 572.

Similar provisions: Pen. Code, sec. 23.

Further instances—of continued statutes: See post, secs. 697, 1415, subd. 4, and secs. 4331, 4442.

§ 20. This act, how cited, etc. This act, whenever cited, enumerated, referred to, or amended, may be designated simply as the Political Code, adding, when necessary, the number of the section. En. March 12, 1872.

Cal.Rep.Cit. 46, 481.

Title of the act: See ante, sec. 1.

PART I.

OF THE SOVEREIGNTY AND PEOPLE OF THE STATE, AND OF THE POLITICAL RIGHTS AND DUTIES OF ALL PERSONS SUBJECT TO ITS JURISDICTION.

PART I.

OF THE SOVEREIGNTY AND PEOPLE OF THE STATE, AND OF THE POLITICAL RIGHTS AND DUTIES OF ALL PERSONS SUBJECT TO ITS JURISDICTION.

Title I. Sovereignty of the State, §§ 30-44.
II. Persons Composing the People of the State, §§ 50-52.
III. Political Rights and Duties of all Persons Subject to the Jurisdiction of the State, §§ 54-60.

TITLE I.

SOVEREIGNTY OF THE STATE.

Chapter I. Residence of Sovereignty, § 30.
II. Territorial Jurisdiction of the State, §§ 33, 34.
III. General Rights of the State over Persons, § 37.
IV. General Rights of the State over Property, §§ 40-44.

CHAPTER I.

RESIDENCE OF SOVEREIGNTY.

§ 30. Sovereignty resides in the people.

§ 30. Sovereignty resides in the people. The sovereignty of the state resides in the people thereof, and all writs and processes must issue in their name. En. March 12, 1872.

People of state—political supremacy of: See Const. Cal., art. I, sec. 2. Rights of: See Const. Cal., art. I, secs. 10, 19, 23.

Style of process: See Const. Cal., art. VI, sec. 20. Prosecutions in name of people: See Const. Cal., art. VI, sec. 20.

State sovereignty; state inseparable part of Union; Const. Cal., art. I, sec. 3. Federal constitution supreme law of land: Ib.

CHAPTER II.

TERRITORIAL JURISDICTION OF THE STATE.

§ 33. Territorial jurisdiction; limitations on.
§ 34. Purchase, etc., of lands by United States for public use.

§ 33. Territorial jurisdiction; limitations on. The sovereignty and jurisdiction of this state extends to all places within its boundaries as established by the constitution, but the extent of such jurisdiction over places that have been or may be ceded to, purchased or condemned by the United States, is qualified by the terms of such cession, or the laws under which such purchase or condemnation has been or may be made. En. March 12, 1872.

Boundary of state: Const. Cal., art. XXI, sec. 1.

Purchase or condemnation by United States: Post, sec. 34.

§ 34. Purchase, etc., of lands by United States for public use. The legislature consents to the purchase or condemnation by the United States of any tract of land within the state for the purpose of erecting forts, magazines, arsenals, dockyards, and other needful buildings, upon the express condition that all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state, against any person charged with crime, may be served and executed thereon in the same mode and manner and by the same officers as if the purchase or condemnation had not been made. En. March 12, 1872.

Lighthouses—and other aids to navigation, submarine sites for: See Stats. 1874, p. 621.

CHAPTER III.

GENERAL RIGHTS OF THE STATE OVER PERSONS.

§ 37. Rights over persons enumerated.

§ 37. Rights over persons enumerated. The state has the following rights over persons within its limits, to be exercised in the cases and in the manner provided by law:

1. To punish for crime;

2. To imprison or confine for the protection of the public peace or health, or of individual life or safety;

3. To imprison or confine for the purpose of enforcing civil remedies;

4. To establish custody and restraint for the persons of idiots, lunatics, drunkards, and other persons of unsound mind;

5. To establish custody and restraint of paupers for the purposes of their maintenance;

6. To establish custody and restraint of minors unprovided for by natural guardians, for the purposes of their education, reformation and maintenance;

7. To require services of persons, with or without compensation: In military duty; in jury duty; as witnesses; as town or village officers; in highway labor; in maintaining the public peace; in enforcing the service of process; in protecting life and property from fire, pestilence, wreck and flood; and in such other cases as are provided by statute. En. March 12, 1872.

Cal.Rep.Cit. 105, 508.

Declaration of rights of people: Const. Cal., art. I, secs. 1-24.

Police powers of state: Post, secs. 2949-3387.

CHAPTER IV.

GENERAL RIGHTS OF THE STATE OVER PROPERTY.

§ 40. Original and ultimate title.
§ 41. Property escheats, when.
§ 42. Intruders on public lands of the state.
§ 43. Acquisition by taxation and assessment.
§ 44. By right of eminent domain.

§ 40. Original and ultimate title. The original and ultimate right to all property, real and personal, within the limits of this state, is in the people thereof. En. March 12, 1872.

Ownership of property—by state: Civ. Code, secs. 669, 670.

Property escheats, when: Post, sec. 41.

Eminent domain: post, sec. 44.

§ 41. Property escheats, when. All property, real and personal, within the limits of this state, which does not belong to any person, belongs to the people. Whenever the title to any property fails for want of heirs or next of kin, it reverts to the people. En. March 12, 1872.

Lands owned by state: Civ. Code, secs. 669, 670.

Escheated estates: See Code Civ. Proc., secs. 1269-1272. Unclaimed realty of aliens escheats to state: Civ. Code, secs. 672, 1404-1405. Duty of controller as to: Post, sec. 437. Duty of attorney-general as to: Post, sec. 474.

§ 42. Intruders on public lands of the state. If any person, under any pretense of any claim inconsistent with the sovereignty and jurisdiction of the state, intrudes upon any of the waste or ungranted lands of the state, the district attorney of the county must immediately report the same to the governor, who must thereupon, by a written order, direct the sheriff of the county to remove the intruder; and if resistance to the execution of the order is made or threatened, the sheriff may call to his aid the power of the county, as in cases of resistance to the writs of the people. En. March 12, 1872.

Sheriff may call to his aid the power of the county; Post, sec. 4176, subd. 5.

§ 43. Acquisition by taxation and assessment. The state may acquire property by taxation in the modes authorized by law. En. March 12, 1872.

Revenue and taxation: Const. Cal., art. XIII, secs. 1-13; post, secs., 3607-3900.

§ 44. By right of eminent domain. It may acquire or authorize others to acquire title to property, real or personal, for public use, in the cases and in the mode provided in title VII, part III, of the Code of Civil Procedure. En. March 12, 1872.

Eminent domain: See Code Civ. Proc., secs. 1237-1263. Corporations subject to: Const. Cal., art. XII, sec. 8. Water-frontages, subject to: Const. Cal., art. XV, sec. 1.

TITLE II.

PERSONS COMPOSING THE PEOPLE OF THE STATE.

§ 50. Who are the people.
§ 51. Who are citizens.
§ 52. Residence, rules for determining.

§ 50. Who are the people. The people, as a political body, consist:

1. Of citizens who are electors;

2. Of citizens not electors. En. March 12, 1872.

Cal.Rep.Cit. 66, 44.

Sovereignty resides in the people: Ante, sec. 30.

§ 51. Who are citizens. The citizens of the state are:

1. All persons born in this state and residing within it, except the children of transient aliens and of alien public ministers, and consuls;

2. All persons born out of this state who are citizens of the United States and residing within this state. En. March 12, 1872.

Cal.Rep.Cit. 66, 44.

Citizens—allegiance of: Post, secs. 55, 56. When qualified electors: Post, secs. 1083, 1084.

Persons not citizens: Post, secs. 54, 57, 60.

Allegiance defined: Post, secs. 55, 56.

§ 52. Residence, rules for determining. Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose;

2. There can only be one residence;

3. A residence cannot be lost until another is gained;

4. The residence of the father during his life, and after his death the residence of the mother, while she remains unmarried, is the residence of the unmarried minor child;

5. The residence of the husband is the residence of the wife;

6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian;

7. The residence can be changed only by the union of act and intent. En. March 12, 1872.

Cal.Rep.Cit. 82, 634; 104, 625; 120, 638; 137, 427. Subd. 4—92, 198; 131, 182.

Residence for purposes of voting—rules for determining: Post, sec. 1239; Const. Cal., art. II, sec. 4.

Absence from state—on official business, does not affect question of residence: Const. Cal., art. XX, sec. 12.

Same residence for wife as for husband. Divorce, rules inapplicable to actions for: See Civ. Code, sec. 129.

Right of husband to select wife's residence: Civ. Code, secs. 103, 104, 156.

Residence of unmarried minor—power of guardian to fix residence of ward: Civ. Code, sec. 248. When parent may change residence of child: Civ. Code, sec. 213.

TITLE III.

POLITICAL RIGHTS AND DUTIES OF ALL PERSONS SUBJECT TO THE JURISDICTION OF THE STATE.

§ 54. All persons within the state subject to its jurisdiction.
§ 55. Allegiance.
§ 56. Allegiance may be renounced.
§ 57. Persons not citizens.
§ 58. Eligibility to office.
§ 59. Rights and duties of citizens not electors.
§ 60. Rights and duties of citizens of other states.

§ 54. All persons within the state subject to its jurisdiction. Every person while within this state is subject to its jurisdiction and entitled to its protection. En. March 12, 1872.

Rights of the state over persons—within its limits: Ante, sec. 37.

§ 55. Allegiance. Allegiance is the obligation of fidelity and obedience which every citizen owes to the state. En. March 12, 1872.

§ 56. Allegiance may be renounced. Allegiance may be renounced by a change of residence. En. March 12, 1872.

Residence—rules for determining place of: Ante, sec. 52.

§ 57. Persons not citizens. Persons in the state not its citizens are either:

1. Citizens of other states; or,
2. Aliens. En. March 12, 1872.

Subd. 1. Citizens of other states: See post, sec. 60.

Subd. 2. Aliens—resident, control of property by; Const. Cal., art. I, sec. 17. With respect to the rights of resident aliens: See ante, sec. 54; Civ. Code, secs. 671, 1404. Non-resident, general rights and unclaimed realty of: See under escheated estates, ante, sec. 41.

§ 58. Eligibility to office. Every elector is eligible to the office for which he is an elector, except where other-

wise specially provided; and no person is eligible who is not such an elector, except when otherwise specially provided. En. March 12, 1872. Am'd. 1891, 29.

Qualified elector—who is: Post, sec. 1083.

Ineligible to office—persons who are: Post, secs. 841, 842.

§ 59. Rights and duties of citizens not electors. An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office. En. March 12, 1872.

§ 60. Rights and duties of citizens of other states. A citizen of the United States, who is not a citizen of this state, has the same rights and duties as a citizen of this state not an elector. En. March 12, 1872.

Cal.Rep.Cit. 66, 44.

PART II.

OF THE CHIEF POLITICAL DIVISIONS, THE SEAT OF GOVERNMENT, AND LEGAL DISTANCES OF THE STATE.

PART II.

OF THE CHIEF POLITICAL DIVISIONS, THE SEAT OF GOVERNMENT, AND LEGAL DISTANCES OF THE STATE.

TITLE I.

CHIEF POLITICAL DIVISIONS OF THE STATE.

Chapter I. Counties, § 75.
II. Senatorial Districts, §§ 78-106. Superseded.
III. Congressional Districts, § 117. Superseded.
IV. Judicial Districts, §§ 125-142. Repealed.

CHAPTER I.

DIVISION OF STATE INTO COUNTIES.

§ 75. The state is divided into counties; the names, boundaries and territorial subdivisions thereof are as declared in part IV of this code. En. March 12, 1872.

See post, secs. 3901 et seq.

CHAPTER II.

SENATORIAL DISTRICTS.

§§ 78 to 106, En. March 12, 1872, were superseded by an act entitled: "An act to define the senatorial and assembly districts of this state, and to apportion the representation thereof." Approved March 16, 1874; Stats. 1873-4, 366.

Later acts defining senate and assembly districts: See act approved March 11, 1891, Stats. 1891, p. 71. This act was superseded by the act of March 21, 1901, Stats. 1901, p. 535.

CHAPTER III.

CONGRESSIONAL DISTRICTS.

§ 117, En. March 12, 1872, was superseded by an act entitled: "An act to divide the state into congressional districts." Approved March 30, 1872; Stats. 1871-2, p. 714.

Later acts: See act dividing congressional districts, approved March 11, 1891, Stats. 1891, p. 84. This act was superseded by the act of March 23, 1901, Stats. 1901, p. 548.

CHAPTER IV.

JUDICIAL DISTRICTS.

§ 125-142. (Repealed.) En. March 12, 1872. [Sec. 132 amended 1875-6, 1.] All these sections repealed Feb. 13, 1880; 1880, 1.

Chapter four, of title one, part two, of the Political Code, and all other laws and parts of laws creating judicial districts in this state, defining boundaries thereof, or providing terms of courts therein, are hereby repealed. [Stats. 1880, p. 1.]

Repealed chapter comprised secs. 125-142; repeal conformed to Const. Cal., art. XXII, sec. 3.

TITLE II.

SEAT OF GOVERNMENT.

§ 145. Located at Sacramento.

§ 145. Located at Sacramento. The seat of government of this state is at the city of Sacramento. En. March 12, 1872.

Seat of government, Sacramento declared to be: See Const. Cal., art. XX, sec. 1.

TITLE III.

LEGAL DISTANCES IN THE STATE.

Title III, part II, is hereby amended so as to read as follows:

§ 150. Legal distances.
§ 151. From Alameda County seat.
§ 152. From Alpine County seat.
§ 153. From Amador County seat.
§ 154. From Butte County seat.
§ 155. From Calaveras County seat.
§ 156. From Colusa County seat.
§ 157. From Contra Costa County seat.
§ 158. From Del Norte County seat.
§ 159. From El Dorado County seat.
§ 160. From Fresno County seat.
§ 161. From Glenn County seat.
§ 162. From Humboldt County seat.
§ 163. From Inyo County seat.
§ 164. From Kern County seat.
§ 165. From Kings County seat.
§ 166. From Lake County seat.
§ 167. From Lassen County seat.
§ 168. From Los Angeles County seat.
§ 169. From Madera County seat.

§ 170. From Marin County seat.
§ 171. From Mariposa County seat.
§ 172. From Mendocino County seat.
§ 173. From Merced County seat.
§ 174. From Modoc County seat.
§ 175. From Mono County seat.
§ 176. From Monterey County seat.
§ 177. From Napa County seat.
§ 178. From Nevada County seat.
§ 179. From Orange County seat.
§ 180. From Placer County seat.
§ 181. From Plumas County seat.
§ 182. From Riverside County seat.
§ 183. From Sacramnto County seat.
§ 184. From San Benito County seat.
§ 185. From San Bernardino County seat.
§ 186. From San Diego County seat.
§ 187. From San Francisco County seat.
§ 188. From San Joaquin County seat.
§ 189. From San Luis Obispo County seat.
§ 190. From San Mateo County seat.
§ 191. From Santa Barbara County seat.
§ 192. From Santa Clara County seat.
§ 193. From Santa Cruz County seat.
§ 194. From Shasta County seat.
§ 195. From Sierra County seat.
§ 196. From Siskiyou County seat.
§ 197. From Solano County seat.
§ 198. From Sonoma County seat.
§ 199. From Stanislaus County seat.
§ 200. From Sutter County seat.
§ 201. From Tehama County seat.
§ 202. From Trinity County seat.
§ 203. From Tulare County seat.
§ 204. From Tuolumne County seat.
§ 205. From Ventura County seat.
§ 206. From Yolo County seat.
§ 207. From Yuba County seat.
§ 208. Mileage, how computed.

§ 150. Legal distances. The legal distances in this state are fixed as follows. En. March 12, 1872. Am'd. 1875-6, 3.

Legal distances—basis of mileage: Post, sec. 208.

§ 151. From Alameda County seat. From the county seat of Alameda County to Sacramento, eighty-four (84) miles. En. March 12, 1872. Am'd. 1875-6, 3; 1903, 330.

§ 152. From Alpine County seat. From the county seat of Alpine County to Sacramento, two hundred and twenty-five (225) miles. En. March 12, 1872. Am'd. 1875-6, 3; 1903, 330.

§ 153. From Amador County seat. From the county seat of Amador County to Sacramento, fifty-nine (59) miles. En. March 12, 1872. Am'd. 1875-6, 3; 1903, 330.

§ 154. From Butte County seat. From the county seat of Butte County to Sacramento, eighty-six (86) miles. En. March 12, 1872. Am'd. 1875-6, 3; 1903, 330.

§ 155. From Calaveras County seat. From the county seat of Calaveras County to Sacramento, seventy-three (73) miles. En. March 12, 1872. Am'd. 1875-6, 3; 1903, 330.

§ 156. From Colusa County seat. From the county seat of Colusa County to Sacramento, seventy-seven (77) miles. En. March 12, 1872. Am'd. 1875-6, 3; 1903, 330.
Cal.Rep.Cit. 55, 128.

§ 157. From Contra Costa County seat. From the county seat of Contra Costa County to Sacramento, sixty-two (62) miles. En. March 12, 1872. Am'd. 1875-6, 3; 1877-8, 1; 1903, 330.

§ 158. From Del Norte County seat. From the county seat of Del Norte County to Sacramento, three hundred and sixty-four (364) miles. En. March 12, 1872. Am'd. 1875-6, 3; 1903, 330.

§ 159. From El Dorado County seat. From the county seat of El Dorado County to Sacramento, sixty (60) miles. En. March 12, 1872. Am'd. 1875-6, 3; 1903, 330.
Cal.Rep.Cit. 55, 128.

§ 160. From Fresno County seat. From the county seat of Fresno County to Sacramento, one hundred and sixty-nine (169) miles. En. March 12, 1872. Am'd. 1875-6, 4; 1903, 330.

§ 161. From Glenn County seat. From the county seat of Glenn County to Sacramento, eighty-eight (88) miles. En. March 12, 1872. Am'd. 1875-6, 4; 1903, 330.

§ 162. From Humboldt County seat. From the county seat of Humboldt County to Sacramento, three hundred and twelve (312) miles. En. March 12, 1872. Am'd. 1873-4, 61; 1875-6, 4; 1903, 330.

§ 163. From Inyo County seat. From the county seat of Inyo County to Sacramento, four hundred and sixty-six (466) miles. En. March 12, 1872. Am'd. 1875-6, 4; 1903, 330.

§ 164. From Kern County seat. From the county seat of Kern County to Sacramento, two hundred and seventy-eight (278) miles. En. March 12, 1872. Am'd. 1875-6, 4; 1903, 330.

§ 165. From Kings County seat. From the county seat of Kings County to Sacramento, two hundred and fourteen (214) miles. En. March 12, 1872. Am'd. 1875-6, 4; 1903, 330.

§ 166. From Lake County seat. From the county seat of Lake County to Sacramento, one hundred and sixty (160) miles. En. March 12, 1872. Am'd. 1875-6, 4; 1903, 330.

§ 167. From Lassen County seat. From the county seat of Lassen County to Sacramento, two hundred and sixty (260) miles. En. March 12, 1872. Am'd. 1875-6, 4; 1903, 330.

§ 168. From Los Angeles County seat. From the counseat of Los Angeles County to Sacramento, four hundred and forty-seven (447) miles. En. March 12, 1872. Am'd. 1875-6, 4; 1903, 330.

§ 169. From Madera County seat. From the county seat of Madera County to Sacramento, one hundred and forty-seven (147) miles. En. March 12, 1872. Am'd. 1875-6, 4; 1903, 330.

§ 170. From Marin County seat. From the county seat of Marin County to Sacramento, one hundred and five (105) miles. En. March 12, 1872. Am'd. 1875-6, 4; 1903, 330.

§ 171. From Mariposa County seat. From the county seat of Mariposa County to Sacramento, one hundred and eighty (180) miles. En. March 12, 1872. Am'd. 1875-6, 5; 1903, 330.

§ 172. From Mendocino County seat. From the county seat of Mendocino County to Sacramento, one hundred and fifty (150) miles. En. March 12, 1872. Am'd. 1875-6, 5; 1903, 330.

§ 173. From Merced County seat. From the county seat of Merced County to Sacramento, one hundred and fourteen (114) miles. En. March 12, 1872. Am'd. 1875-6, 5; 1903, 330.

§ 174. **From Modoc County seat.** From the county seat of Modoc County to Sacramento, three hundred and twenty-four (324) miles. En. March 12, 1872. Am'd. 1875-6, 5; 1903, 330.

§ 175. **From Mono County seat.** From the county seat of Mono County to Sacramento, two hundred and ninety-six (296) miles. En. March 12, 1872. Am'd. 1875-6, 5; 1903, 330.

§ 176. **From Monterey County seat.** From the county seat of Monterey County to Sacramento, two hundred and eight (208) miles. En. March 12, 1872. Am'd. 1875-6, 5; 1903, 330.

§ 177. **From Napa County seat.** From the county seat of Napa County to Sacramento, sixty-one (61) miles. En. March 12, 1872. Am'd. 1875-6, 5; 1903, 330.

§ 178. **From Nevada County seat.** From the county seat of Nevada County to Sacramento, seventy-seven (77) miles. En. March 12, 1872. Am'd. 1875-6, 5; 1903, 330.

§ 179. **From Orange County seat.** From the county seat of Orange County to Sacramento, four hundred and eighty-one (481) miles. En. March 12, 1872. Am'd. 1875-6, 5; 1903, 330.

§ 180. **From Placer County seat.** From the county seat of Placer County to Sacramento, thirty-seven (37) miles. En. March 12, 1872. Am'd. 1875-6, 5; 1903, 330.

§ 181. **From Plumas County seat.** From the county seat of Plumas County to Sacramento, one hundred and thirty-six (136) miles. En. March 12, 1872. Am'd. 1875-6, 5; 1877-8, 1; 1903, 330.

§ 182. **From Riverside County seat.** From the county seat of Riverside County to Sacramento, five hundred and twelve (512) miles. En. March 12, 1872. Am'd. 1875-6, 5; 1903, 330.

§ 183. **From Sacramento County seat.** From the county seat of Sacramento to the state capitol, one (1) mile. En. March 12, 1872. Am'd. 1875-6, 6; 1903, 330.

§ 184. **From San Benito County seat.** From the county seat of San Benito County to Sacramento, one hundred

and seventy-three (173) miles. En. March 12, 1872. Am'd. 1875-6, 6; 1903, 330.

§ 185. **From San Bernardino County seat.** From the county seat of San Bernardino County to Sacramento, five hundred and eight (508) miles. En. March 12, 1872. Am'd. 1875-6, 6; 1903, 330.

§ 186. **From San Diego County seat.** From the county seat of San Diego County to Sacramento, five hundred and seventy-three (573) miles. En. March 12, 1872. Am'd. 1875-6, 6; 1903, 330.

§ 187. **From San Francisco County seat.** From the city of San Francisco to Sacramento, ninety (90) miles. En. March 12, 1872. Am'd. 1875-6, 6; 1903, 330.

§ 188. **From San Joaquin County seat.** From the county seat of San Joaquin County to Sacramento, forty-eight (48) miles. En. March 12, 1872. Am'd. 1875-6, 6; 1903, 330.

§ 189. **From San Luis Obispo County seat.** From the county seat of San Luis Obispo County to Sacramento, three hundred and forty-three (343) miles. En. March 12, 1872. Am'd. 1875-6, 6; 1903, 330.

§ 190. **From San Mateo County seat.** From the county seat of San Mateo County to Sacramento, one hundred and nineteen (119) miles. En. March 12, 1872. Am'd. 1875-6, 6; 1903, 330.

§ 191. **From Santa Barbara County seat.** From the county seat of Santa Barbara County to Sacramento, four hundred and sixty (460) miles. En. March 12, 1872. Am'd. 1875-6, 6; 1903, 330.

§ 192. **From Santa Clara County seat.** From the county seat of Santa Clara County to Sacramento, one hundred and twenty-eight (128) miles. En. March 12, 1872. Am'd. 1875-6, 6; 1903, 330.

§ 193. **From Santa Cruz County seat.** From the county seat of Santa Cruz County to Sacramento, one hundred and ninety-eight (198) miles. En. March 12, 1872. Am'd. 1875-6, 6; 1903, 330.

§ 194. **From Shasta County seat.** From the county seat of Shasta County to Sacramento, one hundred and seventy-

one (171) miles. En. March 12, 1872. Am'd. 1873-4, 3; 1875-6, 6; 1903, 330.

§ 195. **From Sierra County seat.** From the county seat of Sierra County to Sacramento, one hundred and nineteen (119) miles. En. March 12, 1872. Am'd. 1875-6, 7; 1903, 330.

§ 196. **From Siskiyou County seat.** From the county seat of Siskiyou County to Sacramento, two hundred and ninety-five (295) miles. En. March 12, 1872. Am'd. 1875-6, 7; 1903, 330.

§ 197. **From Solano County seat.** From the county seat of Solano County to Sacramento, forty (40) miles. En. March 12, 1872. Am'd. 1875-6, 7; 1903, 330.

§ 198. **From Sonoma County seat.** From the county seat of Sonoma County to Sacramento, ninety (90) miles. En. March 12, 1872. Am'd. 1875-6, 7; 1903, 330.

§ 199. **From Stanislaus County seat.** From the county seat of Stanislaus County to Sacramento, seventy-seven (77) miles. En. March 12, 1872. Am'd. 1875-6, 7; 1877-8, 2; 1903, 330.

§ 200. **From Sutter County seat.** From the county seat of Sutter County to Sacramento, fifty-eight (58) miles. En. March 12, 1872. Am'd. 1875-6, 7; 1903, 330.

§ 201. **From Tehama County seat.** From the county seat of Tehama County to Sacramento, one hundred and thirty-five (135) miles. En. March 12, 1872. Am'd. 1875-6, 7; 1903, 330.

§ 202. **From Trinity County seat.** From the county seat of Trinity County to Sacramento, two hundred and seventeen (217) miles. En. Stats. 1875-6, 7. Am'd. 1903, 330.

§ 203. **From Tulare County seat.** From the county seat of Tulare County to Sacramento, two hundred and six (206). En. Stats. 1875-6, 7. Am'd. 1903, 330.

§ 204. **From Tuolumne County seat.** From the county seat of Tuolumne County to Sacramento, one hundred and twenty-five (125) miles. En. Stats. 1903, 334.

§ 205. **From Ventura County seat.** From the county seat of Ventura County to Sacramento, four hundred and ninety (490) miles. En. Stats. 1903, 334.

§ 206. From Yolo County seat. From the county seat of Yolo County to Sacramento, twenty-three (23) miles. En. Stats. 1903, 334.

§ 207. From Yuba County seat. From the county seat of Yuba County to Sacramento, fifty-two (52) miles. En. Stats. 1903, 334.

§ 208. Mileage, how computed. When mileage is allowed by law to any person, the distance must be computed as herein fixed. En. Stats. 1903, 334.

PART III.

OF THE GOVERNMENT OF THE STATE.

PART III.

OF THE GOVERNMENT OF THE STATE.

Title I. Public Officers, §§ 220-1032.
II. Elections, §§ 1041-1380.
III. Education, §§ 1385-1891.
IV. Militia, §§ 1895-2117.
V. Public Institutions, §§ 2136-2328.
VI. Public Ways, §§ 2348-2938.
VII. General Police of the State, §§ 2949-3387.
VIII. Property of the State, §§ 3395-3597.
IX. Revenue of the State, §§ 3607-3900.

TITLE I.

PUBLIC OFFICERS.

Chapter I. Classification of Public Officers, § 220.
II. Legislative Officers, §§ 225-337.
III. Executive Officers, §§ 341-715.
IV. Judicial Officers, § 726.
V. Salaries of Judicial Officers, §§ 736-739.
VI. Ministerial and other Officers Connected with the Courts, §§ 749-831.
VII. General Provisions Relative to Different Classes of Officers, §§ 841-1032.

CHAPTER I.

CLASSIFICATION OF PUBLIC OFFICERS.

§ 220. Classification of public officers.

§ 220. Classification of public officers. The public officers of this state are classified as follows:

1. Legislative;
2. Executive;
3. Judicial;
4. Ministerial officers and officers of the courts;

But this classification is not to be construed as defining the legal powers of either class. En. March 12, 1872.

Subd. 1. Legislative officers: Post, secs. 225-304.
Subd. 2. Executive officers: Post, secs. 341-715.
Subd. 3. Judicial officers: Post, secs. 726-739.
Subd. 4. Ministerial officers: Post, secs. 749-817.

CHAPTER II.

LEGISLATIVE OFFICERS.

Article I. Number, Designation, Term of Office, and Election of Members, §§ 225-230.
II. Meeting and Organization of the Legislature, §§235-240.
III. Number, Designation, Election and Appointment of Officers and Employees of the Legislature, §§ 245-250.
IV. Powers and Duties of Officers and Employees of the Legislature, §§ 252-261.
V. Compensation of Members, Officers, and Employees of the Legislature, §§ 266-269.
VI. Contesting Elections for Members of the Legislature, §§ 273-283.
VII. Contesting Elections for Governor or Lieutenant Governor, §§ 288-295.
VIII. Attendance and Examination of Witnesses before the Legislature and Committees thereof, §§ 300-304.
IX. Enactment of Statutes, §§ 309-313.
X. Promulgation of Statutes, § 318.
XI. Operation of Statutes, §§ 323-330.
XII. Public Reports, §§ 332-337.

ARTICLE I.

NUMBER, DESIGNATION, TERM OF OFFICE, AND ELECTION OF MEMBERS OF THE LEGISLATURE.

§ 225. Number and designation.
§ 226. Term of office.
§ 227. Election of senators.
§ 228. Same.
§ 229. Election of members of the assembly.
§ 230. Apportionment of members of the assembly.

§ 225. Number and designation. The legislature consists of:

1. Forty senators; and,

2. Eighty members of the assembly. En. March 12, 1872.

Legislature of the state of California, legislative power vested in: Const. Cal., art. IV, sec. 1. Number of members: Const. Cal., art. IV, sec. 5.

§ 226. Term of office. The term of office of a senator is four years; of a member of the assembly, two years. En. March 12, 1872.

Term of office of members of legislature: Const. Cal., art. IV., secs. 3-5.

§§ 227-230. Election of senators. Election of members of the assembly. Apportionment of members of the assembly. Sections 227 to 230, inclusive, En. March 12, 1872, are superseded by sections 30-32 of act of March 16, 1874, (Amendments 1873-4, p. 366,) defining senatorial and assembly districts. This act has been in turn superseded by later acts. The last act defining legislative districts is the act of March 21, 1901, Stats. 1901, p. 535.

ARTICLE II.

MEETING AND ORGANIZATION OF THE LEGISLATURE.

§ 235. Time and place of meeting.
§ 236. Certificate of election, evidence of right to seat.
§ 237. Officers who hold until successors are elected.
§ 238. Senate, organization of.
§ 239. Assembly, organization of.
§ 240. Oath to be entered on journals.

§ 235. Time and place of meeting. The legislature shall assemble at the seat of government at twelve o'clock M. on the first Monday after the first day of January, eighteen hundred and eighty-one, and on the first Monday after the first day of January every two years thereafter. En. March 12, 1872. Am'd. 1880, 48.

Sessions of the legislature: Const. Cal., art. IV., sec. 2.

§ 236. Certificate of election, evidence of right to seat. The certificate of election is prima facie evidence of the right to membership. En. March 12, 1872. Am'd. 1873-4, 3.

Qualifications of members, each house the judge of: Const. Cal., art. IV, sec. 7.

Contesting elections, for members of the legislature: Post, secs. 273-283.

§ 237. Officers who hold until successors are elected. The secretary of the senate, and the clerk of the assembly, the minute clerks, and sergeant-at-arms of each house, for any session, must, at the next succeeding session of the body, perform the duties of their offices, until their successors are elected and qualified. Said officers, and no others, shall be allowed mileage. The secretary of the senate may appoint a postmaster, three gatekeepers, and three pages. The chief clerk of the assembly may appoint a postmaster, three gatekeepers, and three pages. The sergeant-at-arms of the senate and of the assembly may

each appoint an assistant sergeant-at-arms. There shall be no other officers or employees of either house until the permanent organization is completed. Such officers shall serve only until said permanent organization is completed. En. March 12, 1872. Am'd. 1897, 24.

§ 238. **Senate, organization of.** At the hour of twelve o'clock M. on the day appointed for the meeting of any regular session of the legislature, the president of the senate, or in case of his absence or inability, then the senior member present, must take the chair, call the members and members-elect to order, and then cause the secretary to call over the senatorial districts, in their order, from which members have been elected at the preceding election, and as the same are called the members-elect must present their certificates, take the constitutional oath of office, and assume their seats. The senate may thereupon, if a quorum is present, proceed to elect its officers. En. March 12, 1872.

Oath: As to the form of the oath, see Const. Cal., art. XX, sec. 3; and with regard to the time when members of the legislature may take the oath, see post, sec. 906.

Quorum: See Const. Cal., art. IV, sec. 8.

§ 239. **Assembly, organization of.** At the time specified in section two hundred and thirty eight the clerk of the assembly, or in case of his absence or inability, then the senior member-elect present, must take the chair, call the members-elect to order, and then call over the roll of counties in alphabetical order; and as the same are called the members elect must present their certificates, take the constitutional oath of office, and assume their seats. The assembly may thereupon, if a quorum is present, proceed to elect its officers. En. March 12, 1872.

§ 240. **Oath to be entered on journals.** An entry of the oath taken by members of the legislature must be made on the journals of the proper house. En. March 12, 1872.

Cal.Rep.Cit. 80, 218.

Journal kept by each house: Const. Cal., art. IV, sec. 10; post, sec. 256.

ARTICLE III.

NUMBER, DESIGNATION, ELECTION AND APPOINTMENT OF OFFICERS AND EMPLOYEES OF THE LEGISLATURE.

§ 245. Officers of the senate.
§ 246. Officers of the assembly.
§ 247. How elected.
§ 248. Standing committees, appointments of.
§ 249. Duties of committees.
§ 250. Codifying laws.

§ 245. Officers of the senate. The officers and employees of the senate shall consist of a president, a president pro tem., a secretary, three assistant secretaries (who shall be appointed by the secretary, by and with the advice and consent of the senate), one assistant at the desk, one sergeant-at-arms, one assistant sergeant-at-arms, one assistant sergeant-at-arms for the finance committee, one assistant sergeant-at-arms for the judiciary committee, one assistant sergeant-at-arms to be assigned by the sergeant-at-arms to any committee requiring the same, one bookkeeper for the sergeant-at-arms (who shall be appointed by the sergeant-at-arms, by and with the advice and consent of the senate), one minute clerk, three assistant minute clerks, one journal clerk, two assistant journal clerks, one engrossing and enrolling clerk, three assistant engrossing and enrolling clerks, two assistant engrossing and enrolling clerks (said two to be elected on the thirtieth day of the session), one history clerk, one assistant history clerk, three bill filers, four bill clerks, a chaplain, one postmaster, one assistant postmaster, two mail carriers (who shall be mailing and folding clerks), one page to the president of the senate, four pages, three gatekeepers, one doorkeeper, one gallery doorkeeper, two messengers to state printer, one cloakroom clerk, five skilled stenographers (who shall be typewriters, and who shall be at the service of the senate, its members and committees, and under the supervision of the secretary of the senate), one stenographer for the finance committee, one stenographer for the judiciary committee, six porters, one rear porter, three watchmen, one janitress for ladies' cloakroom, two press mailing clerks; and only such other officers or employees as the senate by a three-fifths vote of all the members-elect shall deem necessary. Any officer or employees appointed or elected under the provisions of

this section may at any time be removed by the senate. En. March 12, 1872. Am'd. 1875-6, 8; 1891, 1; 1897, 24; 1899, 1.

Cal.Rep.Cit. 69, 494.

§ 246. **Officers of the assembly.** The officers and employees of the assembly shall consist of a speaker, a speaker pro tem., one chief clerk, four assistant clerks (who shall be appointed by the chief clerk, by and with the advice and consent of the assembly), one sergeant-at-arms, one assistant sergeant-at-arms, one clerk for the sergeant-at-arms, one bookkeeper to the sergeant-at-arms (said bookkeeper to be appointed by the sergeant-at arms, by and with the advice and consent of the assembly), one minute clerk, two assistant minute clerks, one journal clerk, one assistant journal clerk, one engrossing and enrolling clerk, two assistant engrossing and enrolling clerks, and two additional assistant engrossing and enrolling clerks (said last two to be elected on the thirtieth day of the session), one file clerk to keep the files, four bill filers, one chaplain, one postmaster, one assistant postmaster, one mail carrier (who shall be mailing and folding clerk), one page to speaker, six pages, three gatekeepers, one doorkeeper, one gallery doorkeeper, one messenger to printer, one history clerk, one bill clerk, four assistant bill clerks, thirty committee clerks (to be assigned to committees, actually requiring the use of a clerk), six skilled stenographers (who shall be typewriters, and who shall be at the service of the assembly, its members, and its committees under the supervision of the chief clerk), five porters, three watchmen, one fireman, one sergeant-at-arms for the ways and means committee, one sergeant-at-arms for the judiciary committee, one engineer, one electrician, one janitress and one elevator attendant; and only such other officers or employees as the assembly by a three-fifths vote of all the members elect shall deem necessary. Any officer or employee appointed or elected under the provisions of this section may at any time be removed by the assembly. En. March 12, 1872. Am'd. 1875-6, 8; 1891, 2; 1897, 25; 1899, 2.

§ 247. **How elected.** All officers and employees of the legislature, except the president of the senate, porters and pages, must be elected by the house to which such

officers and employees are attached. The porters and pages shall be appointed by the presiding officers of their respective houses. En. March 12, 1872. Am'd. 1875-6, 8.

Elected by the house: See Const. Cal., art. IV, sec. 7.

§ 248. Standing committees, appointments of. All standing committees of the senate and assembly shall be appointed by the presiding officer of the respective houses; provided, that each house may by resolution, or the rules thereof, direct otherwise. En. Stats. 1875-6, 8. Rep. 1891, 426. En. 1899, 165.

§ 249. Duties of committees. The rules of each house may prescribe the duties of each committee thereof. In addition to the duties that may thus be prescribed, it shall be the duty of the judiciary committee of each house, whenever a bill drawn in the form of a general law is recommended for passage, either as introduced, or as amended by such committee, if it relates to and should form part of any subject contained in either one or more of the codes of this state, to accompany such recommendation with a substitute, or substitutes therefor, containing a suitable title and the provisions of such bill in codified form, and numbered so as to indicate in what code, and what part thereof, it is proposed to insert the same in case of enactment. En. Stats. 1875-6, 8. Rep. 1891, 426. En. 1899, 165.

§ 250. Codifying laws. When any standing committee of the senate, or assembly, other than the judiciary committee thereof, favorably report any bill referred thereto, if such bill is in the form of a general law, the same shall be placed on file, retain its place thereon, and be referred to the judiciary committee, whereupon such committee must, if the bill relates to and should form part of any subject contained in either one or more of the codes of this state, codify the same, and within two days after such reference, unless additional time is granted, report a substitute or substitutes therefor in the manner provided in the preceding section. En. Stats. 1899, 165.

ARTICLE IV.

POWERS AND DUTIES OF THE OFFICERS AND EMPLOYEES OF THE LEGISLATURE.

§ 252. What officers of, may administer oaths.
§ 253. Duties of secretary and clerk.
§ 254. Duties of assistant secretary and assistant clerk.
§ 255. Duties of minute clerk.
§ 256. Daily journal of each house to be printed.
§ 257. Duties of journal clerk of assembly. (Repealed.)
§ 258. Duties of copying clerks. (Repealed.)
§ 259. Duties of sergeants-at-arms.
§ 260. Duties of assistant sergeants-at-arms.
§ 261. Duties of officers at close of session.

§ 252. What officers of, may administer oaths. The president and president pro tem. of the senate, and the speaker and speaker pro tem. of the assembly, may administer the oath of office to any senator or assemblyman, and to the officers of their respective bodies. The members of any committee may administer oaths to witnesses in any matter under examination. En. March 12, 1872.

Oath of office: Post, secs. 904-910.

§ 253. Duties of secretary and clerk. The secretary of the senate and the chief clerk of the assembly must attend each day, call the roll, read the journal and bills, and superintend all copying necessary to be done for their respective houses. En. March 12, 1872.

§ 254. Duties of assistant secretary and assistant clerk. The assistant secretaries of the senate and the assistant clerks of the assembly must take charge of all bills, petitions and other papers presented to their respective houses, file and enter the same in the books provided for that purpose, and perform such other duties as may be directed by the secretary of the senate and chief clerk of the assembly. En. March 12, 1872.

Cal.Rep.Cit. 72, 9.

§ 255. Duties of minute clerk. The minute clerk of the senate and the minute clerk of the assembly must keep a correct record of the proceedings of their respective houses. En. March 12, 1872.

Cal.Rep.Cit. 69, 494.

§ 256. Daily journal of each house to be printed. A sufficient number of copies of each day's proceedings of each house of the legislature shall be printed by the state

printer, in book form, separately, to supply the members of both houses and chief officers daily during the session with the journal of the previous day's proceedings; and also a sufficient number of copies, with proper repaging, to bind at the end of the session of the legislature, in book form, as the journals of the senate and assembly; one copy of which daily journal of each house, upon the approval thereof by the house of which it is such daily journal, shall be authenticated as so approved by the presiding officer and chief clerk or secretary (as the case may be) of the house so approving it; and upon the final adjournment of the legislature such copy of the daily journal of each house for the entire session, so authenticated, shall be properly bound in separate volumes, and deposited in the office of the secretary of state as the official journals of both houses of the legislature. En. March 12, 1872. Am'd. 1891, 425.

Cal.Rep.Cit. 69, 494; 80, 213.

257. Duties of journal clerk of assembly. (Repealed). En. March 12, 1872. Rep. 1891, 425.

Cal.Rep.Cit. 69, 494.

§ 258. Duties of copying clerks. (Repealed). En. March 12, 1872. Rep. 1875-6, 9.

§ 259. Duties of sergeants-at-arms. The sergeant-at-arms of the senate and the sergeant-at-arms of the assembly must give a general supervision, under the direction of their presiding officers, to the senate and assembly chambers, with the rooms attached; attend during the sittings of their respective bodies, execute their commands, and all process issued by their authority; keep an account for pay and mileage of members, and prepare checks for the same. En. March 12, 1872.

Pay and mileage of members: Post, sec. 266.

§ 260. Duties of assistant sergeants-at-arms. The assistant sergeant-at-arms of each house must perform the duties of doorkeeper, prohibit all persons, except members, officers and employees, and such other persons as may have the privilege of the floor assigned them by the rules of each house, from entering within the bar of the house, unless upon invitation, and keep order in the halls and lobbies. En. March 12, 1872.

Doorkeeper—open doors: Const. Cal., art. IV, sec. 13.

§ 261. Duties of officers at close of session. The secretary and assistant secretaries of the senate, and chief clerk and assistant clerks of the assembly, at the close of each session of the legislature, must mark, label and arrange all bills and papers belonging to the archives of their respective houses, and deliver them, together with all the books of both houses, to the secretary of state, who must certify to the reception of the same. En. March 12. 1872.

Cal.Rep.Cit. 69, 494; 69, 495.

ARTICLE V.

COMPENSATION OF MEMBERS, OFFICERS AND EMPLOYEES OF THE LEGISLATURE.

§ 266. Per diem and mileage of members.
§ 267. Per diem and mileage of speaker of assembly.
§ 268. Compensation of other officers and employees.
§ 269. Compensation for services after close of session.

§ 266. Per diem and mileage of members. Members of the legislature shall receive eight dollars per day, payable weekly, during the session of the legislature, and ten cents per mile for each mile of travel to and from their residences and the place of holding the session. En. March 12, 1872. Am'd. 1877-8, 5; 1880, 48.

Cal.Rep.Cit. 78, 272.

Section conforms to Const. Cal. 1879, art. IV, sec. 23.

§ 267. Per diem and mileage of speaker of assembly. The speaker of the assembly shall receive the sum of ten dollars per diem during the session of the legislature, and the same mileage and sum for contingent expenses as members of the legislature. En. March 12, 1872. Am'd. 1877-8, 5; 1880, 87.

§ 268. Compensation of other officers and employees. There shall be paid to the officers and employees of the senate the following salaries: To the secretary, eight dollars per day; to the assistant secretaries, sergeant-at-arms, minute clerk, assistant minute clerks, journal clerk, engrossing and enrolling clerk, and history clerk, each, six dollars per day; to the assistant sergeants-at-arms, bookkeeper to sergeant-at-arms, assistant journal clerks, assistant engrossing and enrolling clerks, assistant history clerk, and assistant at desk, each, five dollars

per day; to the chaplain, four dollars per day; to the stenographers, each, five dollars per day; to the bill clerks, committee clerks (excepting the one clerk of the judiciary committee and one clerk of the finance committee shall receive each six dollars per day), postmaster, assistant postmaster, bill filers, cloakroom clerk, and press mailing clerks, each, four dollars per day; to the mail carriers, gatekeepers, doorkeepers, messengers to the printer, porters, watchmen, and janitress to ladies' cloakroom, each, three dollars per day; to each page, two dollars and fifty cents per day.

There shall be paid to the officers and employees of the assembly the following salaries: To the clerk, eight dollars per day; to the assistant clerks, sergeant-at-arms, minute clerk, assistant minute clerks, journal clerk, engrossing and enrolling clerk, file clerk, and history clerk, each, six dollars per day; to the assistant sergeant-at-arms, bookkeeper to sergeant-at-arms, clerk to the sergeant-at-arms, assistant journal clerk, assistant engrossing and enrolling clerks, and stenographers, each, five dollars per day; to the committee clerks (except that one clerk of the ways and means committee and one clerk of the judiciary committee shall each receive six dollars per day), chaplain, bill clerk, assistant bill clerks, postmaster, assistant postmaster, bill filers, engineer, and electrician, each, four dollars per day; to the mail carrier, gatekeepers, doorkeepers, messenger to the printer, porters, elevator attendant, fireman, sergeant-at-arms for the ways and means committee, sergeant-at-arms for the judiciary committee, janitress and watchman, each, three dollars per day; to each page, two dollars and fifty cents per day. En. March 12, 1872. Am'd. 1875-6, 9; 1891, 2; 1897, 25; 1899, 3.

Cal.Rep.Cit. 77, 475.

§ 269. Compensation for services after close of session. For services performed under the provisions of section 261 of this code, each of the officers therein named receive a compensation of fifty dollars. En. March 12, 1872.

Part 3 Title One

ARTICLE VI.

CONTESTING ELECTIONS FOR MEMBERS OF THE LEGISLATURE.

§ 273. Who may contest.
§ 274. Statement of cause of contest to be filed.
§ 275. Commission to take testimony.
§ 276. Notice to person interested. By whom served.
§ 277. Compelling attendance of witnesses.
§ 278. Testimony, how taken.
§ 279. Vacancy in commission, how filled.
§ 280. Fees of officers.
§ 281. Testimony to be transmitted to secretary of state.
§ 282. Depositions.
§ 283. Further evidence may be taken.

§ 273. Who may contest. The right of any person declared elected to a seat in the senate or assembly may be contested by any qualified voter of the county or district to be represented by such senator or assemblyman. En. March 12, 1872.

Qualified voter: Post, secs. 1083, 1084.

§ 274. Statement of cause of contest to be filed. The person contesting such election must, within twenty days after the certificate of election is issued, file with the clerk of the county, or one of the counties in which the alleged cause of contest originated, a statement of the grounds of contest, verified by his oath. En. March 12, 1872. Am'd. 1873-4, 4.

Grounds of contest, verified statement of: Compare Code Civ. Proc., secs. 1115-1117.

§ 275. Commission to take testimony. On the filing of such statement the clerk must issue a commission, directed to two justices of the peace of his county, to meet at a time and place specified in the commission, not less than twenty nor more than thirty days from the date thereof, for the purpose of taking the depositions of such witnesses as the parties to the contest may wish to examine. En. March 12, 1872.

Depositions: See Code Civ. Proc., secs. 2019-2038.

§ 276. Notice to person interested. By whom served. Written notice of such contest, specifying the time and place of taking depositions, and a copy of the statement, certified by the clerk, must be delivered to the person

whose election is contested, or if he cannot be found, left at the house where he last resided, by the sheriff of the county in which such person claims his residence, within ten days after such statement is filed. En. March 12, 1872.

Notice of contest: Compare Code Civ. Proc., sec. 1119.

§ 277. Compelling attendance of witnesses. Either of the justices of the peace have power to issue subpœnas for witnesses, at the request of either party, to be served by the sheriff as other subpœnas; and such justices, when met at the time and place appointed to take such depositions, have the same power to issue attachments and assess fines against witnesses as is given to justices of the peace in the trials of civil actions. En. March 12, 1872.

Issuance of subpœnas from justices' courts: See Code Civ. Proc., sec. 919.

Other subpœnas: See Code Civ. Proc., secs. 1985-1990.

Contempts in justices' courts: See Code Civ. Proc., secs. 906-910.

§ 278. Testimony, how taken. The justices must meet at the time and place appointed, and take the depositions of witnesses produced by the parties, and may continue the examination from day to day, if necessary. When the examination is closed, they must seal up the depositions taken before them, together with the commission, and transmit the same by mail or express to the clerk with whom the statement was filed. En. March 12, 1872.

§ 279. Vacancy in commission, how filled. If at any time either of the justices is unable to proceed in such examination, the clerk may supply the vacancy by designating any other justice of the peace of the county. En. March 12, 1872.

§ 280. Fees of officers. Officers performing services in a contested election case may charge and collect from the party at whose instance such services were performed, the same fees as are allowed them for similar services in civil cases. En. March 12, 1872.

§ 281. Testimony to be transmitted to secretary of state. The clerk must seal up the depositions, the original statement, the copy of the notice served upon the party whose right is contested, and the commission issued to the jus-

tices of the peace, and transmit the same by mail to the secretary of state, indorsing thereon the names of the contesting parties and the branch of the legislature before which such contest is to be tried. The secretary of state must deliver the same, unopened, to the presiding officer of the house in which such contest is to be tried, on or before the second day of the session of the legislature next after taking such depositions, and such presiding officer must immediately give notice to the house that such papers are in his possession. En. March 12, 1872.

Seal and transmit the depositions: Compare Code Civ. Proc., sec. 2032.

§ 282. **Depositions.** At any time after notice of contest has been given, and before the trial thereof before the proper branch of the legislature, either party may take depositions, to be read on the trial, in like manner and under the same rules as are allowed and required in the cases of depositions to be read on the trial of civil actions; and such depositions, when taken, must be sealed up by the officer taking the same, and directed to the secretary of state, who must keep the same, unopened, and deliver them to the presiding officer of the house in which the contest is to be tried. En. March 12, 1872.

Depositions in civil actions, manner of taking: Code Civ. Proc., secs. 2031-2038.

§ 283. **Further evidence may be taken.** The house before which the contest is pending may take such other evidence in the case as it deems material. En. March 12, 1872.

ARTICLE VII.

CONTESTING THE ELECTION FOR GOVERNOR OR LIEUTENANT GOVERNOR.

§ 288. Who may contest.
§ 289. Grounds of contest to be stated in petition.
§ 290. Notice to respondent.
§ 291. Notice to the houses.
§ 292. Trial committee, how chosen.
§ 293. Notice of choice.
§ 294. Powers of committee.
§ 295. Judgment of committee.

§ 288. **Who may contest.** Any elector of the state may contest the election of any person declared elected governor

or lieutenant-governor of the state of California. En. March 12, 1872.

Elector of the state, qualifications of: Post, secs. 1083, 1084.

§ 289. **Grounds of contest to be stated in petition.** Such elector may, within twenty days after the declaration of the result of the election, deliver to the presiding officer of each house of the legislature a verified specification of the grounds of contest. En. March 12, 1872.

§ 290. **Notice to respondent.** As soon as the presiding officers have received the specifications they must make out a notice, in writing, directed to the person whose election is contested, and deliver the same to a sergeant-at-arms, who must serve such notice at once on the person therein named. En. March 12, 1872.

Notice of contest: Compare ante, sec. 276.

§ 291. **Notice to the houses.** The presiding officers must also immediately give notice to their respective houses that such specifications have been received. En. March 12, 1872.

§ 292. **Trial committee, how chosen.** Each house must at once choose seven members of its own body in the following manner:

1. The names of the members, except the speaker of the assembly, written on similar paper tickets, must be placed in a box;

2. The secretary of the senate, in the presence of the senate, and the clerk of the assembly, in the presence of the house, must draw from their respective boxes the names of seven members of each. En. March 12, 1872.

§ 293. **Notice of choice.** As soon as the names are drawn, notice of the names of members drawn in one house must be given to the other, and the names of the fourteen members drawn must be entered on the journals of each house. En. March 12, 1872.

§ 294. **Powers of committee.** The members thus selected constitute a committee to try such contested election, and for that purpose must hold their meetings publicly at the seat of government at such time and

place as they may designate, and may adjourn from day to day, or to a day certain, until such trial is determined. They have power to send for persons and papers, and to take all necessary means to procure testimony, extending like privileges to each party to the contest. They must report their judgment in the premises to both houses of the legislature, which report must be entered upon the journals. En. March 12, 1872.

Powers of committee to procure testimony: Post, secs. 300-304.

§ 295. **Judgment of committee.** The judgment of the committee thus reported is final and conclusive. En. March 12, 1872.

ARTICLE VIII.

ATTENDANCE AND EXAMINATION OF WITNESSES BEFORE THE LEGISLATURE AND COMMITTEES THEREOF.

§ 300. Subpœnas.
§ 301. Service of subpœnas.
§ 302. Contempt.
§ 303. Compelling attendance.
§ 304. Witnesses not to be held to answer criminally. Refusal to testify.

§ 300. **Subpœnas.** A subpœna requiring the attendance of any witness before either house of the legislature, or a committee thereof, may be issued by the president of the senate, speaker of the house, or the chairman of any committee before whom the attendance of the witness is desired; and it is sufficient if:

1. It states whether the proceeding is before the assembly or senate or a committee;

2. It is addressed to the witness;

3. It requires the attendance of such witness at a time and place certain;

4. It is signed by the president of the senate, speaker of the assembly, or chairman of a committee. En. March 12, 1872.

Cal.Rep.Cit. 76, 636.

§ 301. **Service of subpœnas.** The subpœna may be served by any person who might be a witness in the matter, and his affidavit that he delivered a copy to the witness is evidence of service. En. March 12, 1872. Am'd. 1873-4, 4.

Service of subpœna in civil actions: See Code Civ. Proc., sec. 1987.

§ 302. **Contempt.** If any witness neglects or refuses to obey such subpœna, or appearing, neglects or refuses to testify, the senate or assembly may, by resolution entered on the journal, commit him for contempt. En. March 12, 1872.

§ 303. **Compelling attendance.** Any witness neglecting or refusing to attend in obedience to subpœna may be arrested by the sergeant-at-arms and brought before the senate or assembly. The only warrant or authority necessary to authorize such arrest is a copy of a resolution of the senate or assembly, signed by the president of the senate, or speaker of the assembly, and countersigned by the secretary or clerk. En. March 12, 1872.

§ 304. **Witnesses not to be held to answer criminally. Refusal to testify.** No person sworn and examined before either house of the legislature or any committee thereof, can be held to answer criminally or be subject to any penalty or forfeiture for any fact or act touching which he is required to testify; nor is any statement made or paper produced by any such witness competent evidence in any criminal proceeding against such witness; nor can such witness refuse to testify to any fact or to produce any paper touching which he is examined, for the reason that his testimony or the production of such paper may tend to disgrace him or render him infamous. Nothing in this section exempts any witness from prosecution and punishment for perjury committed by him on such examination. En. March 12, 1872.

Constitutional provision of like character: Const. Cal. 1879, art. IV, sec. 35.

Similar provisions: Pen. Code, sec. 14.

Answer tending to disgrace, etc., different provisions for civil action: See Code Civ. Proc., sec. 2065.

ARTICLE IX.

ENACTMENT OF STATUTES.

§ 309. Bills received by the governor, how indorsed.
§ 310. Approval of bills.
§ 311. Bills returned without approval.
§ 312. Return, when house not in session.
§ 313. Bills remaining with the governor more than ten days.

§ 309. Bills received by the governor, how endorsed. Every bill must, as soon as delivered to the governor, be indorsed as follows: "This bill was received by the governor this —— day of ——, eighteen ——." The indorsement must be signed by the private secretary of the governor. En. March 12, 1872.

Presentation of bills to governor, after passage: Const. Cal., art. IV, sec. 16.

Enactment of statutes, requisites of act: Const. Cal., art. IV, sec. 24.

§ 310. Approval of bills. When the governor approves a bill he must set his name thereto, with the date of his approval, and deposit the same in the office of the secretary of state. If any bill presented to the governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the reasons therefor. If the legislature be in session, the governor shall transmit to the house in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the governor. En. March 12, 1872. Am'd. 1880, 3.

Governor's approval—of bill: See Const. Cal., art. IV, sec. 16.

Appropriation bill—provision conforms to Const. Cal. 1879, art. IV, sec. 16. General, what to contain: Const. Cal., art. IV, sec. 29. For specific purpose, to contain but one item: Const. Cal., art. IV, sec. 34. Passage despite objections: Post, sec. 311.

§ 311. Bills returned without approval. When a bill has passed both houses of the legislature, and is returned by the governor without his signature, and with objections

thereto, or if it be a bill containing several items of appropriation of money, with objections to one or more items, and upon reconsideration, such bill, or item, or items, pass both houses by the constitutional majority, the bill, or item, or items must be authenticated as having become a law by a certificate indorsed on or attached to the bill, or indorsed on or attached to the copy of the statement of objections, in the following form: "This bill having been returned by the governor with his objections thereto, and, after reconsideration, having passed both houses by the constitutional majority, has become a law this —— day of ——, A. D. ——;" or, "The following items in the within statement (naming them) having, after reconsideration, passed both houses by the constitutional majority, have become a law this —— day of ——, A. D. ——," which indorsement, signed by the president of the senate and the speaker of the assembly, is a sufficient authentication thereof. Such bill or statement must then be delivered to the governor, and by him must be deposited with the laws in the office of the secretary of state. En. March 12, 1872. Am'd. 1880, 3.

Passage of bills; origination in either house: Const. Cal., art. IV, sec. 15. Introduction, limited time for: Const. Cal., art. IV, sec. 2. Printing: Const. Cal., art. IV, sec. 15. Reading at length: Id. Manner of voting: Id. Majority requisite for passage: Id.

Return by governor, with objections, provided for by Const. Cal., art. IV, sec. 16. Time for: See post, secs. 312, 313.

Reconsideration and passage over veto: See Const. Cal., art. IV, sec. 16.

§ 312. **Return, when house not in session.** If, on the day the governor desires to return a bill without his approval, and with his objections thereto, to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill, with his message, to the presiding officer, secretary, clerk, or any member of such house, and such delivery is as effectual as though returned in open session, if the governor, on the first day the house is again in session, by message, notifies it of such delivery, and of the time when and the person to whom such delivery was made. En. March 12, 1872.

§ 313. Bills remaining with the governor more than ten days. Every bill which has passed both houses of the legislature, and has not been returned by the governor within ten days, thereby becoming a law, is authenticated by the governor causing the fact to be certified thereon by the secretary of state, in the following form: "This bill having remained with the governor ten days (Sundays excepted), and the legislature being in session, it has become a law this —— day of —— A. D. ——," which certificate must be signed by the secretary of state and deposited with the laws in his office. En. March 12, 1872.

Section conforms to Const. Cal., art. IV, sec. 16.

ARTICLE X.

PROMULGATION OF STATUTES.

§ 318. Publication and distribution of statutes.

§ 318. Publication and distribution of statutes. The publication and distribution of statutes is provided for in chapter III, title I, part III, of this code. En. March 12, 1872.

Publication of statutes: See post, secs. 526-537.

Distribution of statutes: See post, sec 409.

ARTICLE XI.

OPERATION OF STATUTES.

§ 323. When statutes take effect.
§ 324. When joint resolutions take effect.
§ 325. Effect of amendment.
§ 326. Construction of statutes.
§ 327. Repeal of statutes.
§ 328. Act not revived by repealing the act repealing it.
§ 329. Repeal of law creating offense no bar to punishment.
§ 330. Amendatory act, when void.

§ 323. When statute takes effect. Every statute, unless a different time is prescribed therein, takes effect on the sixtieth day after its passage. En. March 12, 1872.

Cal.Rep.Cit. 74, 223.

Operation of statutes uniform, where of a general nature: Const. Cal., art. I, sec. 11.

§ 324. When joint resolutions take effect. Every joint resolution, unless a different time is prescribed therein, takes effect from its passage. En. March 12 1872.

§ 325. Effect of amendment. Where a section or part of a statute is amended, it is not to be considered as having been repealed and re-enacted in the amended form; but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment. En. March 12, 1872.

Cal.Rep.Cit. 68, 271; 102, 419; 102, 420; 104, 259; 112, 90; 114, 154; 133, 116.

Re-enacting and publishing act at length as revised or amended: Const. Cal., art. IV, sec. 24.

Amendment of repealed section: Post, sec. 330.

§ 326. Construction of statutes. The general rules for the construction of statutes are contained in the preliminary provisions of the different codes. En. March 12, 1872.

Preliminary provisions of this code: Ante, secs. 1-20.

§ 327. Repeal of statutes. Any statute may be repealed at any time except when it is otherwise provided therein. Persons acting under any statute are deemed to have acted in contemplation of this power of repeal. En. March 12, 1872.

§ 328. Act not revived by repealing the act repealing it. No act or part of an act, repealed by another act of the legislature, is revived by the repeal of the repealing act without express words reviving such repealed act or part of an act. En. March 12, 1872.

§ 329. Repeal of law creating offense no bar to punishment. The repeal of any law creating a criminal offense does not constitute a bar to the indictment or information and punishment of an act already committed in violation of the law so repealed, unless the intention to bar such indictment or information and punishment is expressly declared in the repealing act. En. March 12, 1872. Am'd. 1881, 6.

Cal.Rep.Cit. 57, 106; 93, 436; 93, 437; 93, 438; 93, 440; 93, 442; 101, 307; 102, 35.

Ex post facto laws: See Const. Cal., art. I, sec. 16.

§ 330. Amendatory act, when void. An act amending a section of an act repealed is void. En. March 12, 1872.

Cal.Rep.Cit. 102, 420.

ARTICLE XII.

PUBLIC REPORTS.

§ 332. When state officers, etc., are to report.
§ 333. Reports, printing of.
§ 334. Duties of superintendent of state printing.
§ 335. Distribution of. (Repealed.)
§ 336. To be printed in English.
§ 337. Report of insurance commissioner, distribution of.

§ 332. When state officers, etc., are to report. All officers, boards of officers, commissioners, trustees, regents, and directors, required by law to make reports to the governor or legislature, except the controller of state, must send the original draft of such reports to the governor before the fifteenth day of September, in the year eighteen hundred and ninety-two, and in every second year thereafter. The controller of state must send his report to the governor before the fifteenth day of December in eighteen hundred and ninety-two, and in every second year thereafter. En. March 12, 1872. Am'd. 1880, 83; 1891, 65.

Controller's report.—Controller must report to the governor on the second Monday in October: See post, sec. 433.

§ 333. Reports, printing of. The governor shall, upon receipt of such reports, submit the same to the state board of examiners, who shall order such a number of said reports, or part or parts of each report, printed, as in their judgment will meet the requirements of law; provided, that in no instance shall a less number of copies be printed than is necessary to furnish at least ten copies of each report to all officers, boards of officers, commissioners, trustees, regents, and directors required by law to make reports to the governor or legislature. En. March 12, 1872. Am'd. 1875-6, 9; 1877-8, 6; 1891, 66.

§ 334. Duties of superintendent of state printing. The superintendent of state printing must print such reports, or such part or parts of said reports, as may be ordered by the state board of examiners, in a manner to be designated by said board, before the first Monday in December next after receipt thereof, except the report of the state controller, which shall be printed before the fifteenth day

of January after the receipt thereof, and distribute the same in accordance with the directions of the board of examiners. En. March 12, 1872. Am'd. 1873-4, 4; 1875-6, 9; 1877-8, 6; 1891, 6.

§ 335. Distribution of. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 5; 1875-6, 10; 1877-8, 6. Rep. 1891, 66.

§ 336. To be printed in English. All reports must be printed in the English language. En. March 12, 1872.

§ 337. Report of insurance commissioner, distribution of. Of the report of the insurance commissioner, the commissioner must have printed, at the expense of his office, one thousand copies, and must deliver of the same as follows:

To the governor, twenty copies.

To the state librarian, ten copies.

To the secretary of state, thirty copies.

To the sergeant-at-arms of the senate, eighty copies.

To the sergeant-at-arms of the assembly, one hundred and sixty copies.

And the residue must be distributed by the commissioner in furtherance of the interest of insurance. En. Stats. 1873-4, 7.

CHAPTER III.

EXECUTIVE OFFICERS.

Article I. Classification, Number and Designation of Executive Officers, §§ 341-348.
II. Modes of Election or Appointment and Term of Civil Executive Officers, §§ 348-371.
III. Governor, §§ 380-386.
IV. Lieutenant-Governor, §§ 396, 397.
V. Secretary of state, §§ 407-425.
VI. Controller, §§ 433-444.
VII. Treasurer, §§ 452-460.
VIII. Attorney-General, §§ 470-475.
IX. Surveyor-General, §§ 483-487.
X. Register of the State Land Office, §§ 497-502.
XI. Superintendent of Public Instruction, §§ 512-517.
XII. State Printer, § 526-540.
XIII. State Geologist, §§ 548-554.
XIV. Sealer of Weights and Measures, §§ 561-567.
XV. Inspector of Gas Meters, §§ 577-584.
XVI. Insurance Commissioners, §§ 594-634.
XVII. Fish Commissioners, §§ 642, 643.
XVIII. Board of Examiners, §§ 654-685.
XIX. Other Executive Officers, §§ 695-715.

ARTICLE I.

CLASSIFICATION, NUMBER AND DESIGNATION OF EXECUTIVE OFFICERS.

§ 341. Classification of executive officers.
§ 342. Military officers.
§ 343. Designation and number of civil executive officers.

§ 341. Classification of executive officers. Executive officers are either:

1. Civil; or,
2. Military. En. March 12, 1872.

§ 342. Military officers. Military officers are designated and their duties prescribed in title IV of part III of this code. En. March 12, 1872.

Cal.Rep.Cit. 87, 198.

Militia: See post, secs. 1895-2117.

§ 343. Designation and number of civil executive officers. The number and designation of the civil executive officers are as follows: A governor; a private secretary for the governor; an executive secretary for the governor; a secretary for the board of examiners; a lieutenant-governor; a secretary of state; a deputy secretary of state; a keeper of archives of state for secretary of state; a bookkeeper for the secretary of state; three recording clerks for the secretary of state; a controller; a deputy controller; a bookkeeper for the controller; five clerks for the controller; a treasurer; a deputy treasurer; a bookkeeper for the treasurer; a clerk for six months in each year for the treasurer; an attorney-general; a deputy attorney-general; a surveyor-general, who shall be ex-officio register of the state land office; a deputy surveyor-general; one clerk for the surveyor-general; three clerks for the register; a superintendent of public instruction; a deputy for the superintendent of public instruction; one clerk for the superintendent of public instruction; a superintendent of state printing; an inspector of gas meters; a vaccine agent; an insurance commissioner; a deputy for the insurance commissioner; three state capitol commissioners; four port wardens for the port of San Francisco; a port warden for each port of entry except San Francisco; three state harbor commissioners; three harbor commissioners for the port of Eureka; six pilots for each

harbor where there is no board of pilot commissioners; three members of the board of pilot commissioners for the ports of San Francisco, Mare Island, and Benicia; three members of the board of pilot commissioners for Humboldt Bay and Bar; three fish commissioners; a president and twelve directors of the state board of agriculture; four members of the state board of equalization; a clerk for the board of equalization; three members of the state board of railroad commissioners; a secretary of the state board of railroad commissioners; a bailiff of the state board of railroad commissioners; seven members of the state board of health; five members of the San Francisco board of health; five members of the Sacramento board of health; twenty-two regents of the University of California; three members of the state board of education; seven trustees of the state normal school; five trustees of the state library; a state librarian; two deputies for the state librarian; a librarian for the supreme court library; five directors for the state prisons; two wardens for the state prisons; two clerks of the state prisons; five directors for the insane asylum at Stockton; five directors for the insane asylum at Napa; a medical superintendent of the insane asylum at Stockton; two assistant physicians of the insane asylum at Stockton; a resident physician of the insane asylum at Napa; one first assistant physician of the insane asylum at Napa; provided, when the number of patients shall increase to six hundred, the trustees may elect one additional second assistant physician, with the same pay and emoluments as the first assistant physician; a treasurer of the insane asylum at Stockton; a treasurer of the insane asylum at Napa; five trustees of the asylum for the deaf and dumb and the blind; three trustees of the state burying-grounds; nine commissioners of the Yosemite Valley and the Mariposa Big Tree Grove; such other officers as fill offices created by or under the authority of general laws for the government of counties, cities, and towns, or of the charters or special laws affecting the same, or of the health, school, election, road or revenue laws. En. March 12, 1872. Am'd. 1877-8, 2; 1880, 83; 1887, 54; 1889, 435.

Cal.Rep.Cit. 79, 112; 83, 455; 104, 659; 110, 251.

Part 3 Title 1

ARTICLE II.

THE MODE OF ELECTION OR APPOINTMENT AND TERM OF OFFICE OF CIVIL EXECUTIVE OFFICERS.

§ 348. Certain officers elected.
§ 349. State printer.
§ 350. Register of land office.
§ 351. State sealer of weights and measures.
§ 352. State board of equalization.
§ 353. Regents of the university.
§ 354. Trustees of state normal school.
§ 355. State board of education.
§ 356. Officers of libraries.
§ 357. Yosemite and big tree commissioners.
§ 358. Superintendent, etc., of insane asylum.
§ 359. Directors of state board of agriculture.
§ 360. San Francisco board of health.
§ 361. Sacramento board of health.
§ 362. Harbor commissioners.
§ 363. San Francisco marine board. (Repealed.)
§ 364. Board of examiners.
§ 365. State board of tide land commissioners. (Repealed.)
§ 366. State capitol commissioners.
§ 367. State prison directors.
§ 368. Officers appointed by governor.
Inspector of gas meters.
Trustees of the state burying-grounds.
Directors of insane asylum.
Trustees of asylum for deaf, dumb, and blind.
Port wardens.
Insurance commissioner.
State board of health.
Vaccine agent.
Commissioner of Immigration.
Pilot commissioners.
Pilots.
Fish commissioners.
State geologist.
Tide land commissioners.
§ 369. Term of office of officers mentioned in preceding section.
§ 370. Private secretary and clerk of governor.
§ 371. Deputies and clerks.

§ 348. Certain officers elected. The mode of election of the governor, lieutenant-governor, secretary of state, controller, treasurer, attorney-general, surveyor-general, and superintendent of public instruction, is prescribed by the constitution. En. March 12, 1872.

Election of governor: See Const. Cal., art. V, secs. 2, 4.

Election of lieutenant-governor: See Const. Cal., art. V, sec. 15.

Election of secretary of state, controller, treasurer, attorney-general, and surveyor-general: See Const. Cal., art. V, sec. 17.

Election of superintendent of public instruction: Const. Cal., art. IX, sec. 2.

§ 349. State printer. The state printer is elected at the same time as the state officers mentioned in the preceding section, and holds his office for the term of four years from the first Monday in December next succeeding his election. En. March 12, 1872.

Superintendent of state printing: See post, sec. 526. The office of state printer was abolished and that of "superintendent of state printing" created by act of March 26, 1872; Stats. 1871-2, p. 554. This act was in turn superseded and repealed by secs. 526-540, post.

§ 350. Register of land office. The surveyor-general is ex-officio register, and the deputy surveyor-general is ex-officio deputy register, of the state land office. En. March 12, 1872.

Cal.Rep.Cit. 77, 101; 87, 198.

Register of state land office: Post, secs. 3395, 3396, 3397.

§ 351. State sealer of weights and measures. The secretary of state is ex-officio state sealer of weights and measures. En. March 12, 1872.

State sealer of weights and measures and county sealers: Post, secs. 561-567.

Act relating to weights and measures: See act approved April 6, 1891; Stats. 1891, p. 487. See reference to this act in General Laws, title Weights and Measures.

§ 352. State board of equalization. Members elected, one from each of the congressional districts in this state, by the qualified electors thereof, with the controller, constitute the state board of equalization. Their term of office shall be four years, commencing from the first Monday after the first day of January following their election; provided, that the terms of those members elected in the year eighteen hundred and seventy-nine shall be three years. They shall choose one of their members chairman, who shall hold such office during the pleasure of the board. En. March 12, 1872. Am'd. 1875-6, 11; 1880, 25.

Cal.Rep.Cit. 46, 505.

State board of equalization: See post, secs. 3692-3705.

§ 353. Regents of the university. The governor, lieutenant-governor, speaker of the assembly, superintendent of public instruction, president of the state board of agri-

culture, and president of the Mechanics' Institute of San Francisco, are ex-officio regents of the University of California. The appointment and terms of office of the other regents are provided for in chapter I, title III, of part III, of this code. En. March 12, 1872.

Regents of the university: See post, secs. 1425 et seq.

§ 354. **Trustees of state normal school.** The normal schools at San Jose, Los Angeles, Chico, and San Diego, and any normal school established by the legislature of the state of California after the first day of January, eighteen hundred and ninety-nine, shall be known as "state normal schools," and shall each have a board of trustees, constituted as follows: The governor of the state and the state superintendent of public instruction shall be ex-officio members of each board. There shall also be five other members of the local board for each normal school, whose term of office shall be four years, and who shall be appointed by the governor, by and with the advice and consent of the senate of the state of California. It shall be the duty of the governor, on or before the first day of July, eighteen hundred and ninety-nine, to appoint five trustees as members of each local board, one trustee to serve one year, one to serve two years, one to serve three years, and two to serve for four years, and thereafter to fill vacancies in such board, the terms of office thereafter to be for four years, and to begin July first of each fourth year. En. March 12, 1872. Am'd. 1887, 136; 1897, 234; 1899, 77.

State normal school: See post, secs. 1487 et seq.

§ 355. **State board of education.** The appointment and terms of office of the members of the state board of education are provided for in chapter III, title III, of part III, of this code. En. March 12, 1872.

State board of education: See post, secs. 1517-1522.

§ 356. **Officers of libraries.** The trustees of the state library, the state librarian, the deputy state librarian, and librarian of the supreme court, are elected and appointed, and hold their offices as prescribed in chapter III, title V, of part III, of this code. En. March 12, 1872.

State library: See post, secs. 2292-2305.

§ 357. Yosemite and big tree commissioners. The commissioners of the Yosemite Valley and Mariposa Big Tree Grove are appointed and hold their offices as prescribed in title VIII, of part III, of this code. En. March 12, 1872.

Yosemite Valley and Mariposa Big Tree Grove, commissioners of: See post, secs. 3584-3586.

§ 358. Superintendent, etc., of insane asylum. The medical superintendent, assistant physicians, and treasurer of the insane asylums, are elected, appointed, and hold their offices as prescribed in chapter I, title V, of part III, of this code. En. March 12, 1872.

State commission in lunacy: See post, secs. 2136-2199.

§ 359. Directors of state board of agriculture. The president and directors of the state board of agriculture are elected and hold their offices as prescribed in the special statute creating the board. En. March 12, 1872.

State agricultural society: See post, sec. 2326.

§ 360. San Francisco board of health. The members of the board of health of San Francisco are appointed and hold their offices as prescribed in title VII, part III, of this code. En. March 12, 1872.

Cal.Rep.Cit. 79, 112.

Health regulations of San Francisco: See post, secs. 3004-3035.

§ 361. Sacramento board of health. The members of the board of health of Sacramento are appointed and hold their offices as prescribed in title VII, of part III, of this code. En. March 12, 1872.

Health regulations of Sacramento: See post, secs. 3042-3049.

§ 362. Harbor commissioners. Harbor commissioners are elected and appointed, and hold their offices as prescribed in title VI, of part III, of this code. En. March 12, 1872.

Cal.Rep.Cit. 47, 447.

Harbor commissioners: See post, secs. 2520-2608.

§ 363. San Francisco marine board. (Repealed.) En. March 12, 1872. Rep. 1875-6, 14.

§ 364. Board of examiners. The board of examiners shall consist of the governor, the secretary of state, the

attorney-general, and the secretary of the board, who shall be ex-officio member, to act only in the absence from the state capital of any two of the members. En. March 12, 1872. Am'd. 1893, 182.

Board of examiners: See post, secs. 654-685.

§ 365. State board of tide land commissioners. (Repealed.) En. March 12, 1872. Rep. 1875-6, 15.

§ 366. State capitol commissioners. The governor, secretary of state, and treasurer constitute the board of state capitol commissioners. En. March 12, 1872.

Duty of state capitol commissioners: See post, sec. 697.

§ 367. State prison directors. The governor, lieutenant-governor, and secretary of state constitute the board of state prison directors; and the lieutenant-governor is warden of the state prison. En. March 12, 1872.

§ 368. Officers appointed by governor. The following executive officers are appointed by the governor, with the consent of the senate:

1. The inspector of gas meters; the trustees of the state burying-grounds.

2. The directors of the insane asylum; the trustees of the asylum for the deaf, dumb, and blind; the port wardens; the insurance commissioner; the members of the state board of health; a vaccine agent.

3. The commissioner of immigration; the pilot commissioners; the pilots for each harbor where there is not a board of pilot commissioners; the fish commissioners; the state geologist; the tide land commissioners. En. March 12, 1872.

Cal.Rep.Cit. 49, 411; 76, 634; 76, 638; 83, 455.

Inspector of gas meters: See post, sec. 577.

§ 369. Term of office of officers mentioned in preceding section. The officers enumerated in the first subdivision of the last section hold their offices for the term of two years; those in the second subdivision, for the term of four years; and those in the third subdivision, during the governor's pleasure. En. March 12, 1872.

Cal.Rep.Cit. 49, 411; 76, 635; 83, 455.

§ 370. Private secretary and clerk of governor. The private secretary and executive clerk of the governor are

appointed by him, and hold their offices at his pleasure. En. March 12, 1872.

§ 371. **Deputies and clerks.** All deputies and clerks named in this article, whose appointments and terms of office are not otherwise provided for, are appointed by and hold office at the pleasure of their principals. En. March 12, 1872.

ARTICLE III.

OF THE GOVERNOR.

§ 380. General duties.
§ 381. To transmit list of appointments to legislature.
§ 382. Records in office of.
§ 383. Persons acting as governor.
§ 384. Salary of governor.
§ 385. Salary of private secretary.
§ 386. Salary of executive secretary.

§ 380. **General duties.** In addition to those prescribed by the constitution the governor has the power and must perform the duties prescribed in this and the following sections:

1. He is to supervise the official conduct of all executive and ministerial officers;

2. He is to see that all offices are filled and the duties thereof performed, or, in default thereof, apply such remedy as the law allows; and if the remedy is imperfect, acquaint the legislature therewith at its next session;

3. He is to make the appointments and supply the vacancies mentioned in this code;

4. He is the sole official organ of communication between the government of this state and the government of any other state or of the United States;

5. Whenever any suit or legal proceeding is pending against this state, or which may affect the title of this state to any property, or which may result in any claim against the state, he may direct the attorney-general to appear on behalf of the state, and may employ such additional counsel as he may judge expedient;

6. He may require the attorney-general or district attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state;

7. He may require the attorney-general to aid any district attorney in the discharge of his duties;

8. He may offer rewards not exceeding one thousand dollars each, payable out of the general fund, for the apprehension of any convict who has escaped from the state prison, or of any person who has committed or is charged with the commission of an offense punishable with death;

9. He must perform such duties respecting fugitives from justice as are prescribed by chapter IV, of title XII, of the Penal Code;

10. He must issue and transmit election proclamations, as prescribed in title II, of part III, of this code;

11. He must issue land warrants and patents, as prescribed in title VIII, of part III, of this code;

12. He must, on or before the first day of September, in the year eighteen hundred and seventy-three, and in each second year thereafter, deliver to the state printer for publication all biennial reports of officers and boards for the two preceding years;

13. He may require any officer or board to make special reports to him, upon demand, in writing;

14. He may issue arms and accouterments for the use of colleges;

15. He must discharge the duties of member of the board of examiners, of member of the state board of education, of state prison director, of state capitol commissioner, of orphan asylum commissioner, of trustee of state normal school, and of the board of military auditors;

16. He has such other powers and must perform such other duties as are devolved upon him by this code, or any other law of this state. En. March 12, 1872.

Cal.Rep.Cit. 114, 586.

Prescribed by the constitution, powers and duties of governor: See Const. Cal., art. V, secs. 1, 5, 6-11, 13, 14, 20. Pardoning power: Const. Cal., art. VII, sec. 1.

Subd. 3. Power to fill vacancies: Const. Cal., art. V, sec. 8. Vacancy, what constitutes: Post, sec. 996. Mode of supplying: Post, secs. 997-1004.

Appointing power: See ante, sec. 368.

Power over attorney-general: See post, sec. 470.

Subd. 9. Fugitives from justice: Pen. Code, secs. 1547-1558.

Subd. 10. Election proclamations: Post, secs. 1053, 1054.

Subd. 11. Public lands: Post, secs. 3395-3574.

Act authorizing employment of stenographer: See post, Appendix, title Governor.

§ 381. To transmit list of appointments to legislature. Within ten days after the meeting of the legislature the governor must transmit to it a list of all appointments made by him under the provisions of section 1000. En. March 12, 1872.

§ 382. Records in office of. The governor must cause to be kept the following records:

1. A register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendation in favor of each application;

2. A register of statements in capital cases made to him, with his action thereon;

3. An account of all his official expenses and disbursements, including the incidental expenses of his department, and of all rewards offered by him for the apprehension of criminals and persons charged with crime;

4. A register of all appointments made by him, with date of commission, names of appointee and predecessor;

5. A record of all persons confined in the state prison, showing the name of the convict, his age, and general appearance, when and where convicted, and of what crime, the time of his sentence, and when such time expires. En. March 12, 1872.

§ 383. Persons acting as governor. Every provision in the laws of this state in relation to the powers and duties of the governor, and in relation to acts and duties to be performed by others toward him, extends to the persons performing for the time being the duties of governor. En. March 12, 1872.

Lieutenant-governor acting as governor: Const. Cal., art. V, sec. 16.

§ 384. Salary of governor. The annual salary of the governor, to include all services rendered ex-officio as member of any board or commission as now required, or which may be by law hereafter devolved upon him, six thousand dollars. En. March 12, 1872. Am'd. 1877-8, 3; 1880, 84.

§ 385. **Salary of private secretary.** The annual salary of the private secretary of the governor, is four thousand dollars. En. March 12, 1872. Am'd. 1880, 84; 1889, 55.

§ 386. **Salary of executive secretary.** The executive secretary of the governor is ex-officio secretary of the board of state capitol commissioners. The annual salary of the executive secretary of the governor and ex-officio secretary of the board of state capitol commissioners is two thousand six hundred dollars. En. March 12, 1872. Am'd. 1877-8, 3; 1880, 84; 1889, 403.

ARTICLE IV.

LIEUTENANT-GOVERNOR.

§ 396. Duties of.
§ 397. Compensation of.

§ 396. **Duties of.** The duties of the lieutenant-governor are prescribed by the constitution. En. March 12, 1872. Am'd. 1880, 88.

Prescribed by the constitution, duties of lieutenant-governor: Const. Cal., art. V, secs. 15, 16.

Lieutenant-governor, generally: See same sections of constitution. Liability to impeachment: Const. Cal., art. IV, sec. 18. As governor pro tempore: See ante, sec. 383.

§ 397. **Compensation of.** The lieutenant-governor shall receive the same per diem and mileage, and sum for contingent expenses, as the speaker of the assembly, and only during the session of the legislature. En. March 12, 1872. Am'd. 1877-8, 3; 1880, 88.

Lieutenant-governor's compensation, fixed by amendment 1880, pursuant to Const. Cal. 1879, art. V, sec. 19.

ARTICLE V.

OF THE SECREARY OF STATE.

§ 407. Custody of records.
§ 408. Duties of secretary of state.
§ 409. Distribution of statutes and journals.
§ 410. Distribution of reports of supreme court.
§ 411. To mark books distributed.
§ 412. To superintend and take charge of capitol.
§ 413. To furnish fuel, stationery, etc.
§ 414. Expenses for fuel, etc., how paid.
§ 415. May appoint certain executive officers.
§ 416. Fees.

§ 417. Salary of secretary.
§ 418. Salary of deputy.
§ 419. Salary of bookkeeper.
§ 420. Salary of deputies and employees.
§ 421. Salary of general clerk. (Repealed.)
§ 422. Salary of special clerks. (Repealed.)
§ 422½. Additional clerks.
§ 423. Official bond.
§ 424. Accounts of expenditures.
§ 425. Police for capitol grounds.

§ 407. Custody of records. The secretary of state is charged with the custody:

1. Of the enrolled copy of the constitution;
2. Of all acts and resolutions passed by the legislature;
3. Of the journals of the legislature;
4. Of the great seal;
5. Of all books, records, deeds, parchments, maps, and papers kept or deposited in his office pursuant to law. En. March 12, 1872.

Cal.Rep.Cit. 69, 495.

§ 408. Duties of secretary of state. In addition to the duties prescribed by the constitution, it is the duty of the secretary of state:

First—To attend at every session of the legislature, for the purpose of receiving bills and resolutions thereof, and to perform such other duties as may be devolved upon him by resolution of the two houses, or either of them;

Second—To keep a register of, and attest the official acts of, the governor;

Third—To affix the great seal, with his attestation, to commissions, pardons, and other public instruments, to which the official signature of the governor is required;

Fourth—To record in proper books all conveyances made to the state (except conveyances made under the revenue law of lands sold for taxes), and all articles of incorporation filed in his office;

Fifth—To receive and record in proper books the official bonds of all the officers whose bonds are fixed by part three of this code, and then to deliver the original to the state treasurer;

Sixth—To record in a proper book all changes of names certified to him by the county clerks, in the manner in which such record is now made;

Seventh—To take and file in his office receipts for all

books distributed by him, and to direct the county clerk of each county to do the same;

Eighth—To certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

Ninth—To furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office;

Tenth—To deliver to the superintendent of state printing, at the earliest day practicable after the final adjournment of each session of the legislature, an index of all laws, resolutions (with marginal notes), and journals, kept, passed, or adopted at such session;

Eleventh—To present to the legislature, at the commencement of each session thereof, a full account of all purchases made and expenses incurred by him in furnishing fuel, lights, and stationery;

Twelfth—To keep a fee book, in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payor, paid or not paid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein;

Thirteenth—To file in his office descriptions of seals in use by the different state officers and furnish such officers with new seals whenever required;

Fourteenth—To discharge the duties of member of the state board of examiners, state capitol commissioner, state sealer of weights and measures, and all other duties required of him by law;

Fifteenth—To report to the governor at the time prescribed in section three hundred and thirty-two, a detailed account of all of his official actions since his previous reports, and accompanying the report with a detailed statement, under oath, of the manner in which all appropriations for his office have been expended. En. March 12, 1872. Am'd. 1880, 85; 1903, 58.

§ 409. Distribution of statutes and journals. Immediately after the laws, resolutions, and journals mentioned in subdivision tenth of the preceding section are bound,

the secretary of state must distribute the same, as follows:

1. To each department of the government at Washington, and of the government of this state, one copy;

2. To the library of congress, the state library, and to the supreme court library, two copies each;

3. To each of the states, two copies;

4. To each of our members of congress, and to each of the United States district judges, judges of the supreme and superior courts of this state, one copy;

5. To the lieutenant-governor, each member of the legislature, secretary of the senate, and clerk of the assembly, at the session when such laws and journals were adopted, one copy;

6. To each of the incorporated colleges of the state, the university, and to such other literary and scientific institutions as in his opinion may secure an interchange of works, one copy;

7. Of the laws alone, to the county clerk of each county, in the cheapest and most expeditious manner, to be by the sheriff distributed under the direction of the clerks, one copy for the board of supervisors, one copy to each county officer, and each justice of the peace and police judge; and of the journals, three copies of each house to each county clerk, for the use of the county. En. March 12, 1872. Am'd. 1903, 60.

Secretary of state to keep official records: See Const. Cal., art. V, sec. 19. Subject to impeachment: Const. Cal., art. IV, sec. 18. Grants and commissions countersigned by: Const. Cal., art. V, sec. 14. Mode of election and term of office: Ante, sec. 348.

§ 410. Distribution of reports of supreme court. He must distribute of the bound volumes of the decisions of the supreme court, as soon as he receives them:

1. To each state, one copy;

2. To the library of congress, the state library, and the supreme court library, two copies each;

3. To each department of this state, and to each of the United States district judges for this state, supreme and superior judges of this state, and to the judges of the police court of San Francisco, one copy;

4. To each district attorney and county clerk, one copy;

5. To the reporter of the decisions, ten copies. En. March 12, 1872. Am'd. 1903, 60.

Part 3 Title 1

§ 411. To mark books distributed. The secretary of state must indelibly mark each book distributed to officers in this state (except legislative officers and the reporter) with the name of the county to which and the official designation of the officer to whom it is sent. Such books remain the property of the state, and must be by the officers receiving them delivered to their successors. En. March 12, 1872.

§ 412. To superintend and take charge of capitol. The secretary of state is the superintendent and has charge of the state capitol, and he must keep the same together with all property therein, in good order and repair. En. March 12, 1872.

§ 413. To furnish fuel, stationery, etc. Fuel, lights, and stationery for the senate and assembly, supreme court, and state and supreme court libraries, and for all officers having their offices or chambers in the state capitol, must be furnished by the secretary of state. En. March 12, 1872.

§ 414. Expenses for fuel, etc., how paid. The expenses incurred by him in carrying into effect the provisions of sections 409, 410, 412, and 413, must be audited by the board of examiners and paid out of any moneys specially appropriated for that purpose. En. March 12, 1872.

Board of examiners: Post, secs. 654-685.

§ 415. May appoint certain executive officers. The secretary of state, to assist him in the discharge of the duties of his office, may appoint the following executive officers and no other: One deputy secretary of state, a keeper of the archives, a bookkeeper, five recording clerks, one statistician, one janitor, one janitor's clerk, two engineers, one of whom shall serve only during the sessions of the legislature, two firemen, one of whom shall serve only during the sessions of the legislature, four porters for the capitol building, one porter for office of secretary of state, three watchmen, two elevator attendants, one of whom shall serve only during the sessions of the legislature; also two special clerks in each legislative year, to serve from January first to April first. En. March 12, 1872. Rep. 1897, 99. En. 1903, 60.

1905 623 **§ 416. Fees.** The secretary of state, for services performed in his office, must charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in his office, twenty cents per folio.

2. For comparing a copy of any law, resolution, record, or other document or paper with the original, or the certified copy of the original, on file in his office, five cents per folio.

3. For affixing certificate and seal of state, unless otherwise provided for, two dollars.

4. For filing articles of incorporation, if the capital stock amounts to twenty-five thousand dollars or less, fifteen dollars; if the capital stock amounts to over twenty-five thousand dollars, and not over seventy-five thousand dollars, twenty-five dollars; if the capital stock amounts to over seventy-five thousand dollars, and not over two hundred thousand dollars, fifty dollars; if the capital stock amounts to over two hundred thousand dollars, and not over five hundred thousand dollars, seventy-five dollars; if the capital stock is over five hundred thousand dollars, and not over one million dollars, one hundred dollars; if the capital stock is over one million dollars, fifty dollars additional for every five hundred thousand dollars or fraction thereof of capital stock over and above one million dollars; for filing articles of incorporation without capital stock, except co-operative associations, five dollars; for filing articles of incorporation of co-operative associations, formed under the act of eighteen hundred and ninety-five, and acts supplementary thereto or amendatory thereof, fifteen dollars.

5. For recording articles of incorporation, twenty cents per folio.

6. For issuing certificate of incorporation, three dollars.

7. For filing certificate of increase of capital stock, five dollars for every fifty thousand dollars or fraction thereof of such increase.

8. For filing certificate of decrease of capital stock, five dollars.

9. For filing notice of removal of principal place of business, five dollars.

10. For filing amended articles of incorporation, unless otherwise provided for, five dollars.

11. For filing certificate of creation of bonded indebtedness, or increase or decrease thereof, five dollars.

12. For issuing certificate of increase or decrease of capital stock, three dollars.

13. For filing certificate on continuance of existence, five dollars.

14. For issuing certificate of continuance of existence, three dollars.

15. For filing claim to trademark, and issuing certificate of filing, five dollars.

16. For issuing certificate of filing of any document, not otherwise provided for, three dollars.

17. For filing certificate of increase or decrease of number of directors, five dollars.

18. For issuing certificate of increase or decrease of number of directors, three dollars.

19. For receiving and recording each official bond, five dollars.

20. For filing notice of appointment of agent, five dollars.

21. For each commission, passport, or other document signed by the governor and attested by the secretary of state (pardons, military commissions, and extradition papers excepted), five dollars.

22. For each patent for land issued by the governor, if for one hundred and sixty acres or less, one dollar; and for each additional one hundred and sixty acres, or fraction thereof, one dollar.

23. For issuing certificate of official character, two dollars.

24. For recording miscellaneous documents or papers, twenty cents per folio.

25. For filing certified copy of order and decree of court, changing name, five dollars.

No member of the legislature or state officer shall be charged for any search relative to matters appertaining to the duties of their office; nor shall they be charged any fee for a certified copy of any law or resolution passed by the legislature relative to their official duties.

All fees collected by the secretary of state must, at the end of each month, be paid into the state treasury. Twenty-five hundred dollars of such monthly returns

shall be credited to and constitute the state library fund, and the balance shall be paid into the general fund of the state. En. March 12, 1872. Am'd. 1881, 65; 1895, 63; 1901, 86; 1903, 27.

Fee book: Ante, sec. 408, subd. 13. Certified copies of documents to be furnished on payment of fees: Ante, sec. 408, subd. 9.

§ 417. **Salary of secretary.** The annual salary of the secretary of state, to include all services rendered ex-officio as member of any board or commission as now required, or which may be by law hereafter devolved upon him, is three thousand dollars. En. March 12, 1872. Am'd. 1877-8, 3; 1880, 86.

Salary of secretary of state under amendment of 1880 corresponds with Const. Cal. 1879, art. V, sec. 19.

1905 784 § 418. **Salary of deputy.** The annual salary of the deputy seretary of state is two thousand four hundred dollars. En. March 12, 1872. Am'd. 1877-8, 4.

1905 784 § 419. **Salary of bookkeeper.** The annual salary of the bookkeeper shall be two thousand dollars. En. March 12, 1872. Am'd. 1877-8, 4; 1880, 86.

Originally "clerk," with two thousand four hundred dollars annual salary.

§ 420. **Salary of deputies and employees.** The annual salary of the keeper of the archives is two thousand dollars; of each recording clerk, sixteen hundred dollars; of the statistician, two thousand dollars; of the janitor, two thousand dollars; of the janitor's clerk, sixteen hundred dollars; of one engineer, fifteen hundred dollars; of one fireman, ten hundred and eighty dollars; of one elevator attendant, nine hundred dollars; of each porter of the capitol building, ten hundred and eighty dollars; of the porter for the secretary of state's office, seven hundred and twenty dollars; of each watchman, ten hundred and eighty dollars. The monthly salary of the engineer serving during the sessions of the legislature is one hundred and twenty-five dollars; of the fireman serving during the sessions of the legislature, ninety dollars; of the elevator attendant serving during the sessions of the legislature, seventy-five dollars, and each special

clerk serving from the first day of January to the first day of April during each legislative year, one hundred and twenty-five dollars. All such salaries are payable in the same manner and at the same time as other state officers. En. March 12, 1872. Am'd. 1877-8, 4; 1880, 86; 1903, 61.

§ 421. **Salary of general clerk.** (Repealed.) En. March 12, 1872. Rep. 1880, 88. New Section 421 - 1905 - 10

§ 422. **Salary of special clerks.** (Repealed.) En. March 12, 1872. Am'd. 1880, 86.

§ 422½. **Additional clerks.** From the first day of May, nineteen hundred and one, to the first day of January, nineteen hundred and three, the secretary of state is hereby authorized to appoint two additional clerks in his office, who shall be civil executive officers; said clerks to be paid the same salary as other clerks employed by the secretary of state, and be payable at the same time and in the same manner as other state officers are paid. En. Stats. 1901, 271.

§ 423. **Official bond.** The secretary of state must execute an official bond in the sum of ten thousand dollars. En. March 12, 1872.

Official bonds: Post, secs. 947 et seq.

Filing bond by secretary of state: Post, sec. 949.

§ 424. **Accounts of expenditures.** All state officers and appointees shall produce itemized accounts for all moneys other than salaries, expended by them, accompanied by affidavit that the money has been expended. En. Stats. 1877-8, 5.

Act prohibiting creation of debt in excess of appropriation: See act approved March 23, 1893, Stats. 1893, p. 285.

§ 425. **Police for capitol grounds.** The board of capitol commissioners shall appoint three special policemen, to hold office during its pleasure, for the state capitol grounds, who shall have the power of peace officers, and receive for their services a salary of one hundred dollars per month each, payable as the salaries of other state officials. En. Stats. 1887, 151. Am'd. 1889, 427.

ARTICLE VI.

CONTROLLER.

§ 433. General duties of.
§ 434. Certificate of settlement.
§ 435. Special duties connected with school fund.
§ 436. Order in which warrants must be drawn.
§ 437. Prceedings against defaulters.
§ 438. Salary.
§ 439. Salary of deputy controller.
§ 440. Salary of bookkeeper.
§ 441. Salary of clerks.
§ 442. Official bond.
§ 443. Controller to estimate and certify school tax of year.
§ 444. Grammar school fund. (Repealed.)

§ 433. General duties of. It is the duty of the controller:

1. To superintend the fiscal concerns of the state;

2. To report to the governor, on the second Monday in October next preceding each regular session of the legislature, a statement of the funds of the state, its revenues, and of the public expenditures during the two preceding fiscal years, together with a detailed estimate of the expenditures to be defrayed from the treasury for the two ensuing fiscal years, specifying therein each object of expenditure, and distinguishing between such as are provided for by permanent or temporary appropriations and such as must be provided for by a new statute, and suggesting the means from which such expenditures are to be defrayed;

3. To accompany his biennial report with tabular statements, showing: 1. The amount of each appropriation for the two preceding fiscal years, the amounts expended, and the balance, if any; 2. The amounts of revenue chargeable to each county for such years, the amount paid, and the amount unpaid or due therefrom;

4. When requested, to give information in writing to either house of the legislature relating to the fiscal affairs of the state or the duties of his office;

5. To suggest plans for the improvement and management of the public revenues;

6. To keep and state all accounts in which the state is interested;

7. To keep an account of all warrants drawn upon the treasurer, and a separate account under the head of each specific appropriation, showing at all times the unexpended balance of such appropriation;

8. To keep an account between the state and the treasurer, and therein charge the treasurer with the balance in the treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn on and paid by him;

9. To keep a register of warrants, showing the fund upon which they are drawn, the number, in whose favor, for what service, the appropriation applicable to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered;

10. To audit all claims against the state in cases where there is [are] sufficient provisions of law for the payment thereof;

11. To examine and settle the accounts of all persons indebted to the state, and to certify the amount to the treasurer, and upon presentation and filing of the treasurer's receipt therefor to give such person a discharge and charge the treasurer therewith;

12. In his discretion to require any person presenting an account for settlement to be sworn before him, and to answer orally or in writing, as to any facts relating to it;

13. To require all persons who have received any moneys belonging to the state and have not accounted therefor to settle their accounts;

14. In his discretion to inspect the books of any person charged with the receipt, safe-keeping, or disbursement of public moneys;

15. In his discretion, to require all persons who have received moneys or securities, or have had the disposition or management of any property of the state of which an account is kept in his office, to render statements thereof to him; and all such persons must render such statement at such times and in such form as he may require;

16. To direct and superintend the collection of all moneys due the state, and institute suits in its name for all official delinquencies in relation to the assessment, collection, and payment of the revenue, and against persons who by any means have become possessed of public money or property and fail to pay over or deliver the same, and against all debtors of the state; of which suits the courts of Sacramento County have jurisdiction, without regard to the residence of the defendants;

17. To draw warrants on the treasurer for the payment

of moneys directed by law to be paid out of the treasury; but no warrant must be drawn unless authorized by law, and upon an unexhausted specific appropriation provided by law to meet the same. Every warrant must be drawn upon the fund out of which it is payable, and specify the service for which it is drawn, when the liability accrued, and the specific appropriation applicable to the payment thereof;

18. To furnish the state treasurer with a list of warrants drawn upon the treasury;

19. To have printed and forwarded to the auditor of each county blank state licenses;

20. To authenticate with his official seal all drafts and warrants drawn by him, and all copies of papers issued from his office;

21. To perform the duties of a member of the state board of equalization, and of the state board of tide land commissioners, and such other duties as are prescribed by law. En. March 12, 1872.

Cal.Rep.Cit. 69, 225; 78, 577; 80, 224; 105, 596; 106, 116; 106, 133; 106, 136. Subd. 16—51, 567; 105, 596. Subd. 17—69, 76; 80, 222; 80, 226; 80, 228.

Controller impeachable: Const. Cal., art. IV, sec. 18. Election: Ante, sec. 348; Const. Cal., art. V, sec. 17. State board of equalization, ex-officio member of: Const. Cal., art. XIII, sec. 9. Canvasser of returns of election on revision of constitution: Const. Cal., art. XVIII, sec. 2. Supervision of, by board of examiners: Secs. 672, 674, 675, 678.

Punishment for willful omission of duty: Pen. Code, sec. 176.

Lost warrants, act relating to payment of: See General Laws, title Lost Warrants.

Subd. 11. Certificate: Post, sec. 434.

Subd. 17. Warrants, authority to draw: Post, sec. 672.

§ 434. Certificate of settlement. The certificate mentioned in subdivision 11 of section 433 must show by whom the payment is to be made, the amount thereof, and the funds into which it is to be paid, and must be numbered in order, beginning with number one at the commencement of each fiscal year. En. March 12, 1872.

§ 435. Special duties connected with school fund. The controller must keep a separate account of the school fund,

and of the interest and income thereof, together with such moneys as may be raised by special tax, or otherwise, for school purposes. He must, on the first Monday in January and on the first Monday in July in each year, report to the superintendent of public instruction, a statement of the securities belonging to the school fund, of the moneys in the treasury subject to apportionment, and the several sources from which they accrued. He must draw his warrant on the state treasurer in favor of any county treasurer, whenever such county treasurer presents, with his indorsement, an order drawn by the superintendent of public instruction in favor of such county; and the warrant so drawn is not subject to the provisions of article eighteen of this chapter. En. March 12, 1872. Am'd. 1891, 471.

Apportionment of state school fund: Post, sec. 1532, subd. 4.

§ 436. Order in which warrants must be drawn. All warrants for claims which have been audited by the board of examiners and filed in his office must be drawn in the order of the numbers placed upon them by that board. En. March 12, 1872.

Cal.Rep.Cit. 80, 228.

Board of examiners: Post, secs. 654-685.

§ 437. Proceedings against defaulters. Whenever any person has received moneys, or has money or other personal property which belongs to the state by escheat or otherwise, or has been intrusted with the collection, management, or disbursement of any moneys, bonds, or interest accruing therefrom, belonging to or held in trust by the state, and fails to render an account thereof to, and make settlement with, the controller within the time prescribed by law, or when no particular time is specified, fails to render such account and make settlement, or who fails to pay into the state treasury any moneys belonging to the state, upon being required so to do by the controller, within twenty days after such requisition, the controller must state an account with such person, charging twenty-five per cent damages, and interest at the rate of ten per cent per annum from [the] time of the failure; a copy of which account in any suit therein is prima facie evidence of the things therein stated; but in case the controller cannot for want of information state an account, he may

in any action brought by him aver that fact and allege generally the amount of money or other property which is due to or which belongs to the state. En. March 12, 1872. Am'd. 1873-4, 7.

Cal.Rep.Cit. 70, 214; 73, 575; 73, 576; 73, 577; 73, 578; 73, 579; 73, 580; 76, 123; 117, 243.

Escheatment: See Escheated Estates, ante, sec. 41.

§ 438. Salary. The annual salary of the controller, to include all services rendered ex-officio as member of any board or commission as now required, or which may be by law hereafter devolved upon him, is three thousand dollars. En. March 12, 1872. Am'd. 1877-8, 4; 1880, 86.

1905 785 **§ 439. Salary of deputy controller.** The annual salary of the deputy controller is two thousand four hundred dollars. En. March 12, 1872. Am'd. 1877-8, 4.

1905 785 **§ 440. Salary of bookkeeper.** The annual salary of the bookkeeper for the controller is two thousand dollars. En. March 12, 1872. Am'd. 1877-8, 4; 1880, 86.

1905 755 **§ 441. Salary of clerks.** The annual salary of each clerk in the controller's office is sixteen hundred dollars. En. March 12, 1872. Am'd. 1877-8, 4; 1880, 87.

§ 442. Official bond. The controller must execute an official bond in the sum of fifty thousand dollars. En. March 12, 1872.

Official bonds: See post, secs. 947 et seq.

§ 443. Controller to estimate and certify school tax of year. The state controller must, between the tenth day of August and the first day of September of each year, estimate the amount necessary to raise the sum of seven dollars for each census child, between the ages of five and seventeen years, in this state, which shall be the amount necessary to be raised by ad valorem tax for school purposes, during the year, which amount the controller must immediately certify to the state board of equalization. En. Stats. 1873-4, 84.

§ 444. Grammar school fund. (Repealed.) En. Stats. 1887, 124. Rep. 1891, 150. The fund known as the grammar school course fund, provided for by the statutes of 1887 (Stats. 1887, p. 124) was also abolished by act approved March 20, 1891, as follows:

Cal.Rep.Cit. 106, 133.

The fund known as the grammar school course fund is hereby abolished. Upon the passage of this act, the controller of state is hereby authorized and directed to credit to the state school fund any and all money that may stand to the grammar school course fund. All outstanding claims against the grammar school course fund shall be paid out of the school fund.

ARTICLE VII.

TREASURER.

§ 452. General duties.
§ 453. Limitations upon receipt and payment of money.
§ 454. General fund.
§ 455. Salary of treasurer.
§ 456. Salary of deputy and bookkeeper.
§ 457. Watchmen, appointment and salary.
§ 458. Watchmen, powers and duties.
§ 459. Official bond of treasurer.
§ 460. Porter, appointment and salary.

§ 452. General duties. It is the duty of the treasurer:

1. To receive and keep in the vaults of the state treasury all moneys belonging to the state, not required to be received and kept by some other person;

2. To file and keep the certificates of the controller delivered to him when moneys are paid into the treasury;

3. To deliver to each person paying money into the treasury a receipt showing the amount, the sources from which the money accrued, and the funds into which it is paid, which receipts must be numbered in order, beginning with number one at the commencement of each fiscal year;

4. To pay warrants drawn by the controller out of the funds upon and in the order in which they are drawn;

5. Upon payment of any warrant, to take upon the back thereof the receipt of the person to whom it is paid, and file and preserve the same;

6. To keep an account of all moneys received and disbursed;

7. To keep separate accounts of the different funds;

8. To report to the controller, on the last day of each month, the amount disbursed for redemption of bonds and in payment of warrants during the month; which report must show the date and number of such bonds and warrants, the funds out of which they were paid, and the balance of cash on hand in the treasury to the credit of each fund;

9. At the request of either house of the legislature, or of any committee thereof, to give information in writing as to the condition of the treasury, or upon any subject relating to the duties of his office;

10. To report to the governor at the time prescribed in section 332 of this code, the exact balance in the treasury to the credit of the state, with a summary of the receipts and payments of the treasury during the two preceding fiscal years;

11. To authenticate with his official seal all writings and papers issued from his office;

12. To discharge the duties of state capitol commissioner, and such other duties as may be imposed upon him by law. En. March 12, 1872.

Supervision, counting money, etc., by board of examiners: Post, secs. 675-678.

Acts authorizing transfer of funds: See post, Appendix, title Treasurers.

§ 453. **Limitations upon receipt and payment of money.** He must receive no money into the treasury unless accompanied by the certificate of the controller provided for in sections 433 and 434 of this code, and must pay none out upon warrants issued for indebtedness accruing prior to January first, eighteen hundred and fifty-seven. En. March 12, 1872.

Refunding money paid into state treasury, special legislation for, prohibited: Const. Cal. 1879, art. IV, sec. 25, subd. 15.

§ 454. **General fund.** The general fund consists of moneys received into the treasury and not specially appropriated to any other fund. En. March 12, 1872.

Cal.Rep.Cit. 57, 548; 57, 549; 106, 118.

§ 455. **Salary of treasurer.** The annual salary of the state treasurer, to include all services rendered ex-officio as member of any board or commission as now required, or which may be hereafter by law devolved upon him, is three thousand dollars. En. March 12, 1872. Am'd. 1877-8, 4; 1880, 87.

Salary of treasurer: Amendment 1880 conforms to Const. Cal. 1879, art. V, sec. 19.

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§ 456. **Salary of deputy and bookkeeper.** The annual salary of the deputy state treasurer is twenty-four hundred dollars; the annual salary of the bookkeeper of the treasurer of state is two thousand dollars. En. March 12, 1872. Am'd. 1877-8, 4; 1880, 87; 1889, 229.

§ 457. **Watchmen, appointment and salary.** The treasurer may employ four watchmen at an annual salary each of twelve hundred dollars. En. March 12, 1872. Am'd. 1903, 410.

§ 458. **Watchmen, powers and duties.** The watchmen must be alternately on duty at all hours of the day and night, and have the same power to make arrests as is by the Penal Code conferred upon peace officers. En. March 12, 1872.

Arrest by peace officer: Pen. Code, sec. 836. Generally: Pen. Code, secs. 834-851.

§ 459. **Official bond of treasurer.** The treasurer must execute an official bond in the sum of one hundred thousand dollars. En. March 12, 1872.

Official bonds: Post, secs. 947 et seq.

§ 460. **Porter, appointment and salary.** The treasurer may employ a porter at an annual salary of seven hundred and twenty dollars. En. Stats. 1903, 398.

ARTICLE VIII.

ATTORNEY-GENERAL.

§ 470. General duties.
§ 471. Salary.
§ 472. Assistant and deputies, appointment and salaries.
§ 473. Official bond.
§ 474. Escheated property.
§ 475. Clerks and reporter, appointment and salaries.

§ 470. **General duties.** It is the duty of the attorney-general:

1. To attend the supreme court and prosecute or defend all causes to which the state, or any officer thereof, in his official capacity is a party; and all causes to which any county may be a party, unless the interest of the county is adverse to the state, or some officer thereof acting in his official capacity;

2. After judgment in any of the causes referred to in the

preceding section, to direct the issuing of such process as may be necessary to carry the same into execution;

3. To account for and pay over to the proper officer all moneys which may come into his possession belonging to the state or to any county;

4. To keep a docket of all causes in which he is required to appear, which must during business hours be open to the inspection of the public, and must show the county, district, and court in which the causes have been instituted and tried, and whether they are civil or criminal; if civil, the nature of the demand, the stage of the proceedings, and when prosecuted to judgment, memorandum of the judgment; of any process issued thereon, and whether satisfied or not; if not satisfied, the return of the sheriff; and if criminal, the nature of the crime, the mode of prosecution, the stage of the proceedings, and when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reasons of the delay or prevention;

5. To exercise supervisory powers over district attorneys in all matters pertaining to the duties of their offices, and from time to time require of them reports as to the condition of public business intrusted to their charge;

6. To give his opinion in writing, without fee, to the legislature or either house thereof, and to the governor, the secretary of state, controller, treasurer, surveyor-general, superintendent of public instruction, the trustees or commissioners of state institutions, and any district attorney when required, upon any question of law relating to their respective offices;

7. When required by the public service, or directed by the governor, to repair to any county in the state and assist the district attorney thereof in the discharge of his duties;

8. To bid upon and purchase in the name of the state and under the direction of the board of examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and to enter satisfaction in whole or in part, of such judgments as the consideration for such purchases;

9. Whenever the property of a judgment debtor in any judgment mentioned in the preceding subdivision has been sold under a prior judgment, or is subject to any judgment, lien, or incumbrance taking precedence of the judgment in

favor of the state, under the direction of the board of examiners, to redeem such property from such prior judgment, lien, or incumbrance; and all sums of money necessary for such redemption must, upon the order of the board of examiners, be paid out of any money appropriated for such purpose;

10. When in his opinion it may be necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as he may find necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must, when allowed by the board of examiners, be paid out of any appropriations for the prosecution of delinquents;

11. To discharge the duties of a member of the board of examiners, of the board of military auditors, and other duties prescribed by law;

12. To report to the governor, at the time required by section three hundred and thirty-two of this code, the condition of the affairs of his department, and to accompany the same with a copy of his docket, and of the reports received by him from district attorneys. En. March 12, 1872. Am'd. 1901, 45.

Cal.Rep.Cit. 61, 254; 105, 596; 105, 597; 106, 133. Subd. 7—103, 502.

Land titles, to attend contests to quiet: Post, sec. 3413.

Attorney-general, impeachment, subject to: Const. Cal., art. IV, sec. 18. Mode and time of election, and term of office: Const. Cal., art. V, sec. 17; ante, sec. 348.

Acts authorizing attorney-general to dismiss and compromise certain suits: See post, Appendix, title Attorney-General.

§ 471. **Salary.** The annual salary of the attorney-general, to include all services rendered ex-officio as member of any board or commission as now required, or which may be hereafter devolved upon him by law, is three thousand dollars. En. March 12, 1872. Am'd. 1877-8, 4; 1880, 87.

Section conforms to Const. Cal. 1879, art. V, sec. 19.

§ 472. **Assistant and deputies, appointment and salaries.** The attorney-general may appoint one assistant, who shall be a member of the state board of examiners when the

attorney-general is absent from the capitol, and three deputies, who shall be civil executive officers. The annual salary of the assistant shall be twenty-seven hundred dollars; the annual salary of the first deputy shall be twenty-four hundred dollars; the annual salary of the second deputy shall be twenty-four hundred dollars; the annual salary of the third deputy shall be twenty-four hundred dollars. Said salaries shall be payable in the same manner as salaries of other state officers.

Subdivision 1. The attorney-general shall not employ special counsel in any case except those provided in section four hundred and seventy-four of the Political Code.

Subd. 2. The attorney-general shall have charge, as attorney, of all legal matters in which the state is in anywise interested, except the business of the regents of the university of California and of the state harbor commissioners, and no board, officer or officers, or employee of the state, except said regents and said harbor commissioners, shall employ any attorney other than the attorney-general, or one of his assistants or deputies, in any matter in which the state is interested; nor shall any money be drawn out of the treasury, or out of any moneys appropriated out of the treasury, or out of any special or contingent fund under the control of any board, officer or officers, or employee, for the pay of any legal services rendered after the passage of this act, the provisions of any existing statute to the contrary notwithstanding; provided, that whenever a district attorney in any county of this state shall, for any reason, become disqualified from conducting any criminal prosecution within such county, the attorney-general may employ special counsel to conduct such prosecution, and the attorney's fee in such case shall be a legal charge against the state.

Subd. 3. All acts in conflict with this act are hereby repealed.

Provided further, that nothing herein contained shall be construed to prevent or deny the right of any board, officer or officers, or employee of the state to employ or engage counsel in any matter of the state, after first having obtained the written consent so to do of the attorney-general. En. March 12, 1872. Am'd. 1877-8, 4; 1880, 87; 1891, 135; 1895, 66.

Cal.Rep.Cit. 135, 413; 135, 414.

§ 473. Official bond. The attorney-general must execute an official bond in the sum of ten thousand dollars. En. March 12, 1872.

Official bonds: Post, secs. 947 et seq.

§ 474. Escheated property. It shall be the duty of the attorney-general to institute investigation for the discovery of all real and personal property which may have or should escheat to the state, and for that purpose shall have full power and authority to cite any and all persons before any of the superior courts of this state to answer investigations and render accounts concerning said property, real or personal, and to examine all books and papers of any and all corporations. When any real or personal property shall be discovered, which should escheat to the state, the attorney-general must institute suit in the superior court of the county where said property shall be situated, for recovery, to escheat the same to the state. The proceedings in all such actions shall be those provided for in title eight, part three, Code of Civil Procedure. The attorney-general may, for the purposes and objects of this section, employ counsel to act in his place and stead for the discovery and recovery of both personal and real property, and in such proceedings, both in investigation for discovery or proceedings for recovery, such counsel so employed shall have the power and authority of the attorney-general. The compensation for services of such counsel shall be determined by the board of examiners, and paid out of the sums so found to be escheated and recovered to the state, and not otherwise; provided, that the state of California shall in no case be responsible for any charges for attorney fees for suits prosecuted under this act, but the attorney-general is hereby authorized to pay to the person or persons discovering the same the costs and charges of prosecuting any suit or suits under this act, a sum not in any case exceeding ten per cent of the sums actually received as provided in this act. En. Stats. 1875-6, 15. Am'd. 1880, 18.

Cal.Rep.Cit. 72, 21; 72, 22; 72, 24; 72, 26; 72, 28.

Escheated estates: See ante, sec. 41.

§ 475. Clerks and reporter, appointment and salaries. The attorney-general may appoint three clerks and one phonographic reporter for his office. The annual salary

of each of such clerks shall be sixteen hundred dollars, and the annual salary of the phonographic reporter shall be eighteen hundred dollars. Said salaries shall be paid at the same times, and in the same manner, as the salaries of other state officers are paid. Said clerks and said phonographic reporter shall be civil executive officers. En. Stats. 1889, 219. Am'd. 1891, 181; 1895, 65; 1903, 107.

Cal.Rep.Cit. 106, 133.

ARTICLE IX.

SURVEYOR-GENERAL.

§ 483. General duties.
§ 484. Salary.
§ 485. Deputy surveyor-general and assistants, appointment and salaries.
§ 486. Salary of clerk.
§ 487. Official bond.

§ 483. General duties. It is the duty of the surveyor-general:

1. To discharge the duties relating to the public lands imposed upon him by title VIII, of part III, of this code;

2. When required to survey and mark the boundary lines of counties, cities, villages, and towns;

3. To report to the governor at the time prescribed in section 332 of this code: 1. A statement of the progress made in the execution of the surveys enjoined on him by law; 2. An estimate of the aggregate quantity of land belonging to the state, and the best information he may be able to obtain as to the characteristics of the same; 3. An estimate of the aggregate quantity of all land used for or adapted to tillage and grazing within each county of the state; 4. An estimate of the number of horses, cattle, sheep, and swine within each county of the state; 5. An estimate of the quantity of wheat, rye, corn, potatoes, grapes, and other agricultural and horticultural productions of the two preceding years, together with his views as to the presence, cause, and remedy of any diseases or other malady preventing full and perfect productions; 6. An estimate of the quantity of all mineral lands within each county of the state, and the quantity and value of each mineral produced during the two preceding years, together with a description of the localities in which such minerals may be found; 7. All facts in his opinion calcu-

lated to promote the development of the resources of the state;

4. To require county surveyors and assessors to collect and transmit to him, at such times as he may direct, information relative to the subject-matter of his biennial reports;

5. To authenticate with his official seal all writings and papers issued from his office;

6. To perform such other duties as may be required of him by law. En. March 12, 1872.

Cal.Rep.Cit. 110, 250.

Surveyor-general, legislature may abolish office: Const. Cal., art. V, sec. 19. Impeachable: Const. Cal., art. IV, sec. 18. Election: See ante, sec. 348.

Subd. 1. Public lands: Secs. 3395-3574.

Subd. 2. Survey of boundary line between Siskiyou and Lassen counties: See Stats. 1872, p. 886.

§ 484. **Salary.** The annual salary of the surveyor-general, for all services rendered in any capacity whatsoever, is three thousand dollars. En. March 12, 1872. Am'd. 1877-8, 5; 1880, 87.

Section conforms to Const. Cal. 1879, art. V, sec. 19.

§ 485. **Deputy surveyor-general and assistants, appointment and salaries.** The surveyor-general may appoint a deputy surveyor-general, who shall be ex-officio deputy of the register of the state land office, and one assistant surveyor-general, who shall be ex-officio assistant register of the state land office, and one clerk, all of whom shall be civil executive officers. The annual salary of the deputy surveyor-general, including his services as ex-officio deputy of the register of the state land office, shall be two thousand four hundred dollars. The annual salary of the assistant surveyor-general, including his services as ex-officio assistant register of the state land office, shall be two thousand dollars. The annual salary of the clerk to the surveyor-general shall be sixteen hundred dollars. Said salaries shall be payable in the same manner as salaries of other state officers. En. March 12, 1872. Am'd. 1877-8, 5; 1903, 415. 1905 754

§ 486. **Salary of clerk.** The annual salary of each clerk in the office of the surveyor-general is sixteen hundred dollars. En. March 12, 1872. Am'd. 1877-8, 5; 1880, 87.

§ 487. Official bond. The surveyor-general must execute an official bond in the sum of ten thousand dollars. En. March 12, 1872.

Official bond: Post, secs. 947 et seq.

ARTICLE X.

REGISTER OF THE STATE LAND OFFICE.

§ 497. Register and deputy.
§ 498. Duties of register.
§ 499. Salary. (Repealed.)
§ 500. Salary of clerks.
§ 501. Fees of register.
§ 502. Official bond.

§ 497. Register and deputy. The surveyor-general is ex-officio register, and the deputy surveyor-general is ex-officio deputy register, of the state land office. En. March 12, 1872.

Cal.Rep.Cit. 77, 101.

Register: See next section.

§ 498. Duties of register. The duties of [the] register are prescribed in title VIII, part III, of this code. En. March 12, 1872.

Duties of register: See post, secs. 3395-3574.

§ 499. Salary. (Repealed.) En. March 12, 1872. Am'd. 1877-8, 5. Rep. 1880, 2; 1880, 88.

§ 500. Salary of clerks. The annual salary of each clerk in the register's office is sixteen hundred dollars. En. March 12, 1872. Am'd. 1877-8, 5; 1880, 87.

§ 501. Fees of register. The register must charge and collect fees as follows: For each certificate of purchase, duplicate, or patent, three dollars; for certifying a contested case to district court, three dollars; for copies of papers in his office, ten cents per folio, and fifty cents for the certificate with the seal attached; and such other fees as may be allowed by law. All fees received by the register must be disposed of as provided in title VIII, of part III, of this code. En. March 21, 1872.

Cal.Rep.Cit. 133, 541.

Disposition of fees: See post, sec. 3574.

§ 502. Official bond. The register must execute an official bond in the sum of ten thousand dollars. En. March 12, 1872.

Official bonds: Generally, see secs. 947-986.

ARTICLE XI.

OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

§ 512. Duties.
§ 513. Salary.
§ 514. Salary of deputy.
§ 515. Salary of clerk.
§ 516. Traveling expenses.
§ 517. Official bond.

§ 512. Duties. The duties of the superintendent of public instruction are prescribed in title III, of part III, of this code. En. March 12, 1872.

Duties: See post, sec. 1582.

§ 513. Salary. The annual salary of the superintendent of public instruction is three thousand dollars. En. March 12, 1872; 1877-8, 5.

§ 514. Salary of deputy. The annual salary of the deputy for the superintendent of public instruction is the same as the salary paid to deputies for other state officers, namely, two thousand four hundred dollars. En. March 12, 1872. Am'd. 1887, 14.

§ 515. Salary of clerk. The annual salary of the clerk for the superintendent of public instruction is sixteen hundred dollars. En. March 12, 1872. Rep. 1877-8, 5. En. 1880, 87. 1905-192

Act providing for clerk for superintendent of public instruction: See act of March 27, 1895; Stats. 1895, p. 238.

§ 516. Traveling expenses. The actual traveling expenses of the superintendent, not exceeding ten hundred dollars annually, must be audited by the board of examiners, and paid out of the general fund in the state treasury. En. March 12, 1872. Am'd. 1880, 87.

Board of examiners: Post, secs. 654 et seq.

§ 517. Official bond. The superintendent must execute an official bond in the sum of ten thousand dollars. En. March 12, 1872.

Bonds, generally: Post, secs. 947-986.

ARTICLE XII.

SUPERINTENDENT OF STATE PRINTING.

§ 526. General duties.
§ 527. Number of documents to be printed.
§ 528. Laws and journals to be printed.
§ 529. Manner of printing.
§ 530. Election and bond.
§ 531. Further duties.
§ 532. Paper.
§ 533. Folding, stitching and binding.
§ 534. Salary.
§ 535. Maintenance of machinery.
§ 536. Contingent expenses, fund for.
§ 537. Warrants for wages.
§ 538. Maps, engravings, etc.
§ 539. Printing bills.
§ 540. State printing fund.

§ 526. General duties. It is the duty of the superintendent of state printing:

1. To print the laws; the journals of the legislature; reports of state officers; public documents ordered to be printed by the legislature; blanks for the supreme court, the offices of governor, secretary of state, controller, treasurer of state, superintendent of public instruction, attorney-general, surveyor-general, and register of the land office; the bills, resolutions, and other job printing which may be ordered by either of the two houses of the legislature, and all other public printing for the state, unless otherwise expressly ordered by law.

2. To publish, prefixed to each volume of the laws, the names and place of residence of the governor, and other executive officers of the state, lieutenant-governor, senators, and representatives in the legislature, the presiding officers of the senate and assembly, and of commissioners of the state of California residing out of the state, and in office at the time of such publication.

3. To perform the duties required by the provisions of article XII, chapter II, title I, part III, of this code, and such other duties as are imposed upon him by law;

4. He shall keep in his office, open to public inspection, a time book, containing the name of every employee connected with the state printing office, the time employed, the rate of wages, and amount paid; and he shall certify, under oath, to the correctness of all claims for services rendered and materials furnished, which certificate shall be attached to and presented with each claim that shall

be presented to the board of examiners for allowance, and no such claim shall be certified or allowed unless it be fully itemized.

5. He shall file in the office of the secretary of state, all proposals, bids, contracts, bonds, and other papers appertaining to the awarding of contracts now in his possession, or which may hereafter come into his possession, retaining in his office copies of the same; and the secretary of state shall promptly furnish the board of examiners, for their use, certified copies of all such papers.

6. All printing required by any of the state departments, boards, or any state officer, for the state, the order for the same shall be made out upon a printed blank, with voucher attached, to be furnished by the superintendent of state printing, and forwarded to the office of said superintendent, who shall enter upon a book kept in his office for that purpose, a transcript of said orders; and shall return with the work, when completed, to the person ordering the same, the original order with duplicate voucher attached; said voucher to be signed by the person receiving the work, and returned to the superintendent of state printing, and both original and duplicate orders shall be kept on file in his office, and shall be a sufficient voucher for said work. The superintendent of state printing shall enter upon a book to be kept for said purpose, the name, quantity and weight of paper used for each order printed. He shall also certify, under oath, that all materials, stock, and paper furnished the office under contracts are of the quality, kind, and weight required by such contracts; and no claim arising under any contract shall be allowed or paid unless accompanied by such certificate. He shall also retain and file in his office one copy or sample of each blank, circular, pamphlet, book, legislative bill, file, or report, or any other work emanating from the state printing office, excepting blank books, of which he shall file only sample sheets. Said copies or samples shall bear a uniform number and date with the voucher.

7. No printing for the senate, or any committee of the same, shall be executed except upon an official order of the secretary, and no order for any printing shall be made by that officer unless the same is ordered by a majority vote of the senate. All printing done for the senate shall be delivered to the sergeant-at-arms of that body, whose duty

it shall be to distribute one third of the copies of any document printed to the members of the senate, and two thirds to the sergeant-at-arms of the assembly, who shall receipt therefor, for distribution to the members thereof. There shall be printed two hundred and forty copies of all bills, resolutions and reports ordered printed by the senate.

8. No printing for the assembly, or any committee of the same, shall be executed except upon an official order of the chief clerk, and no order for any printing shall be made by that officer unless the same is ordered by a majority vote of the assembly. All printing done for the assembly shall be delivered to the sergeant-at-arms of that body, whose duty it shall be to distribute two thirds of the copies of any document printed to the members of the assembly, and one third to the sergeant-at-arms of the senate, who shall receipt therefor, for distribution to the members thereof. There shall be printed two hundred and forty copies of all bills, resolutions, and reports ordered printed by the assembly.

9. The receipts of the respective sergeant-at-arms of the senate and assembly shall be a sufficient voucher to the superintendent of state printing for all work done for either house. En. March 12, 1872. Am'd. 1875-6, 16; 1877-8, 7.

Duties: Post, sec. 531. Subject to supervision of printing expert: Post, sec. 679.

Public reports, printing of: Ante, secs. 332-337.

§ 527. **Number of documents to be printed.** Whenever any message or document, in book form is ordered printed by either house, four hundred and eighty copies thereof, in addition to the number ordered, must be struck off and retained in sheets, and bound with the journals of the house ordering the same, as an appendix. Of bills ordered printed, when the number is not fixed in the order, there must be printed two hundred and forty copies. En. March 12, 1872.

§ 528. **Laws and journals to be printed.** There must be printed of the laws of each session of the legislature, twenty-two hundred and fifty copies, in English, to be deposited with the secretary of state, who, after retaining a sufficient number of said volumes for distribution, in accordance with the provisions of section four hundred and nine of the Political Code, shall deposit one hundred and

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fifty copies with the state librarian; the remaining copies to be sold at a price not to exceed three dollars per bound volume; the moneys thus received to be paid into the state treasury at the end of each month, as other fees are paid by the said secretary of state, and for the same purposes. Whenever any bill, joint or concurrent resolution, is passed to enrollment, by either the senate or assembly, the committee on enrollment of the house, in which the bill, joint or concurrent resolution originated, shall transmit the same, without delay, to the superintendent of state printing, who shall receipt for all such bills and resolutions, and proceed at once to have the same printed, in the order in which received, in the measure prescribed by law for the statutes. So soon as printed, one copy with proper blanks for the signatures of the officers whose duty it is to sign enrolled bills, shall be printed on bond paper, which, together with the engrossed bill, shall be sent to the committee on enrollment of the house in which the bill originated. Said committee shall compare such copy with the engrossed bill, and if it is found to be correct shall present it to the proper officers for their signatures. When such officials shall have signed their names thereon, as required by law, it shall be an enrolled bill, and shall be transmitted to the governor for his approval. If the same is signed by the governor, and becomes a law, the printed law shall go to the secretary of state and become the official record.

2. Whenever a law is signed by the governor, official notice shall be forwarded, in writing, to the superintendent of state printing of the fact. Upon the receipt of said official notice, the superintendent of state printing shall cause to be printed, for the use of the legislature, two hundred and forty copies of said law, joint or concurrent resolution, to be distributed, one third to the senate and two thirds to the assembly, the sergeant-at-arms of the respective houses to receipt to the superintendent of state printing for the same, whose receipt shall be a proper voucher for the work. He shall also cause to be printed the requisite number of sheets to make the number of copies of the statutes required by law to be printed, the one composition of type to answer the purpose of printing the three editions; and of such laws, resolutions, and memorials as may be designated by the legislature, two

hundred and forty copies in Spanish. Of the journals and appendices of the senate and assembly there must be printed four hundred and eighty copies, in one volume or more, as may be required by the size thereof. The superintendent of state printing shall have the laws, journals of senate and assembly, and the appendices thereto; properly indexed and bound, the laws in full law sheep binding, and journals and appendices in half law sheep binding, marble sides, and deliver the same to the secretary of state for distribution as soon as practical after the final adjournment of the legislature, and the receipt of the secretary of state shall be his voucher therefor. En. March 12, 1872. Am'd. 1875-6, 17; 1877-8, 9.

Cal.Rep.Cit. 117, 623.

§ 529. **Manner of printing.** - Printing must be done as follows: The laws, journals, messages, and other documents in book form, must be printed solid, with long primer type, on good white paper; each page, except of the laws, must be thirty-three ems wide and fifty-eight ems long, including title, blank line under it, and foot line; of the laws the same length, and twenty-nine ems wide, exclusive of marginal notes, which notes must be printed in nonpareil type, seven ems wide. Figure work, and rule and figure work, in messages, reports, and other documents in book form, must be on pages corresponding in size with the journals, if it can be brought in by using type not smaller than minion; if not, it must be executed in a form to fold and bind with the volume. Blanks must be printed in such form, and on such paper, and with such sized type as the officers ordering them may direct. The laws must be printed without chapter headings, and without blank lines, with the exception of one head line, one foot line, two lines between the last section of an act and the title of the next act. When there is not space enough between the last section of an act to print the title and enacting clause, and one line of the following act upon the same page, such title may be printed upon the following page. The journals must be printed without blank lines, with the exception of one head line, one foot line, and two lines between the journal of one day and that of the following day. In printing the words ayes and noes, the word "ayes" and the word "noes" must be run in with the names. En. March 12, 1872. Am'd. 1897, 1.

§ 530. Election and bond. The superintendent of state printing shall be elected at the same time and place and in the same manner as the governor of the state, and his term of office and qualifications shall also be the same. He shall be a competent practical printer, and before entering upon the discharge of the duties of his office shall give a good and sufficient bond to the people of the state of California in the sum of ten thousand dollars, with two or more sufficient sureties, to be approved by the governor, for the faithful performance of his duties, which bond shall be filed in the office of secretary of state. En. March 12, 1872. Am'd. 1875-6, 18; 1891, 59.

§ 531. Further duties. The duties of the superintendent of state printing shall be as follows: He shall have the entire charge and superintendence of the state printing and binding. He shall take charge of and be responsible on his bond for all manuscripts and other matter which may be placed in his hands to be printed, bound, engraved, or lithographed, and shall cause the same to be promptly executed. He shall receive from the senate or assembly all matter ordered by either house to be printed and bound, or either printed or bound, and shall keep a record of the same, and of the order in which it may be received; and when the work shall have been executed, he shall deliver the finished sheets or volumes to the sergeant-at-arms of the senate or assembly, or of any department authorized to receive them, whose receipt therefor shall be a sufficient voucher to the said superintendent of state printing for their delivery. He shall receive and promptly execute all orders for printing or binding, required to be done for the various state officers; provided, that the said superintendent of state printing shall have discretionary authority to revise, reduce, or decline to execute any order, or part of any order, which in his judgment is unnecessary or unwarranted by law, and which will tend to unnecessarily consume the appropriation for support of the state printing office; and provided further, that in the event that any state officer, board, commission or state institution shall consider the decision of the said superintendent of state printing unfair, he may refer the matter to the state board of examiners, which board shall determine the matter. He shall employ such compositors, pressmen, and assistants as the exi-

gency of the work from time to time requires, and may at any time discharge such employees; provided, that at no time shall he pay said compositors, pressmen, or assistants a higher rate of wages than is paid by those employing printers in Sacramento for like work. He shall at no time employ more compositors or assistants than the absolute necessities of the state printing may demand, and he shall not permit any other than state work to be done in the state printing office. The superintendent of state printing shall, on or before the fifteenth day of September of each year, make a report, in writing, to the governor, embracing a record of the complete transactions of his office for the preceding fiscal year, which report shall show in detail all the items of expense attending the state printing and all the expenses of the office, including repairs and the purchase of materials of all kinds. Said report shall also state the number of reams and various kinds of paper delivered to him, and the amount and quality remaining on hand, which report shall be printed, biennially, for the use of the legislature. En. March 12, 1872. Am'd. 1875-6, 18; 1877-8, 10; 1891, 66; 1895, 233.

§ 532. **Paper.** In April, eighteen hundred and ninety-six, and in April of every year thereafter, the superintendent of state printing shall submit to the state board of examiners samples of the various kinds, sizes, and qualities of paper that will probably be required in his office during the year commencing on the then next first Monday in July, an estimate of the probable quantity of each kind, size, and quality that will be so required. Upon being satisfied that the kinds, sizes, quantities, and qualities of paper so suggested will be required, they shall direct the superintendent of state printing to advertise for thirty days, in two daily newspapers, one of which shall be published in the city of San Francisco, and one in the city of Sacramento, for proposals to furnish such paper, or so much thereof as may be required during the year commencing as aforesaid, which bids shall be opened in his office, at twelve o'clock M. on the day appointed, in the presence of the said superintendent, and at least two of the state board of examiners; and the said superintendent of state printing, and the members of the state board of examiners then and there present, shall constitute a board to award the contract to the lowest and best re-

sponsible bidder. No bid shall be considered unless accompanied by a certified check, in the sum of two thousand dollars, gold coin, payable to the governor for the use of the people of the state of California, conditioned that if the bidder receives the award of the contract he will, within thirty days, enter into bonds in the sum of ten thousand dollars, with two or more sureties, to be approved by the governor of the state, that he will faithfully perform the conditions of his contract. All bids must be for the furnishing and delivery of the paper and materials at the state printing office, in the city of Sacramento, so that the state shall not be charged with any cost of transportation or delivery, which must be specified in the advertisement for bids. If all the bids opened shall be deemed too high by said board, they may decline them and advertise again. If the second set of bids are considered too high, the said board may again decline them, and the superintendent of state printing may purchase such paper in the open market. The prices paid shall in no case be higher than the lowest price at which such paper was offered to be furnished by the bids so rejected. En. March 12, 1872. Am'd. 1875-6, 19; 1877-8, 11; 1895, 234.

§ 533. Folding, stitching and binding. All ruling, folding, and folding and stitching, and binding required to be executed for the state, shall be done under the supervision of said superintendent. He shall advertise for thirty days in one daily newspaper published in the city of San Francisco, and one daily newspaper published in the city of Sacramento, specifying the character of the binding, folding, and stitching to be bid upon, for proposals to do all such folding, folding and stitching, ruling and binding, all of which work shall be done in the city of Sacramento, and on the day appointed he shall, in the presence of the board of examiners, open the bids that may be received, and said superintendent of state printing and said board of examiners shall award said contract to the lowest responsible bidder or bidders therefor. En. March 12, 1872. Am'd. 1875-6, 20.

§ 534. Salary. The annual salary of the superintendent of state printing shall be three thousand dollars. He may appoint a deputy superintendent of state printing, who shall be a civil executive officer, and who shall receive a salary of two thousand four hundred dollars per annum.

Sec. 2. Said salaries shall be paid at the same time and in the same manner as the salaries of other state officers are paid. En. March 12, 1872. Am'd. 1875-6, 20; 1885, 32; 1897, 238.

§ 535. Maintenance of machinery. Whenever any appropriation is made for the support of the state printing office, a sum not exceeding one thousand dollars thereof shall be applied when necessary to and used for the purpose of repairing the present and purchasing new machinery of the state printing office, in each fiscal year for which the appropriation is made. En. March 12, 1872. Am'd. 1875-6, 20.

§ 536. Contingent expenses, fund for. Whenever any money is appropriated for the support of the state printing office, a sum not exceeding the sum of one thousand dollars thereof shall, in each fiscal year for which the appropriation is made, be applied to and used for the purpose of paying contingent expenses of state printing office. The superintendent of state printing shall keep an itemized account of all moneys expended out of the contingent fund hereby created, and shall furnish the governor with a copy of the same, under oath, at the end of each fiscal year. En. March 12, 1872. Am'd. 1875-6, 21; 1877-8, 12.

Cal.Rep.Cit. 46, 77.

§ 537. Warrants for wages. The state treasurer is hereby authorized, when the general fund is exhausted, to advance the money on the controller's warrants, drawn for wages and salaries of the employees in the state printing office, out of any public funds in the treasury, which warrants shall be his vouchers until there is money in the general fund to cancel them; provided, that this section shall not apply to any fund against which there are any warrants then due, or to become due, or so as to keep claimants out of their just demands. Any sum of money remaining unexpended of the appropriation heretofore made for the purchase of materials for the state printing office is hereby appropriated to the payment of claims due for the construction of the state printing office. En. March 12, 1872. Am'd. 1875-6, 21.

§ 538. Maps, engravings, etc. When any chart, map, diagram, or other engraving shall be required to illustrate

any document ordered to be printed, such chart, map, diagram, or engraving shall be procured by the superintendent of state printing. No bills for engraving, or lithographing, or lithograph printing, other than the above, shall be allowed by the board of examiners. All state printing shall be done in the state printing office. En. Stats. 1875-6, 21. Am'd. 1877-8, 12.

§ 539. **Printing bills.** All bills and other documents ordered engrossed by either house of the legislature shall be delivered by the secretary of the senate or chief clerk of the house, as the case may be, to the engrossing clerk of the house ordering the engrossment, who shall deliver such bills or other documents, without delay, in the order of their receipt, to the state printer, who shall receipt for the same, and without delay engross (print) the same in the order so received by him, and deliver such engrossed bill or other documents, with the original thereof, to the engrossing clerk from whom he receives the same, who shall carefully compare the engrossed copy with the original, and, if correctly engrossed, report the same back, with the original, to the engrossing committee of the house from which he received it. All bills and other documents that have been printed shall be considered engrossed, if no amendments have been made after being printed, but the original bill or document shall be delivered to the engrossing clerk of the respective houses where same originated, and he shall compare the original bill, or other document, with the printed bill or other document, and forthwith deliver them to the committee on engrossment for return to the house in the same manner as engrossed bills. Such bills, or other documents, shall have a separate order of comparison from the engrossed bills. And all bills and other documents, required to be enrolled by order of either house, shall be delivered by the secretary of the senate, or chief clerk of the house, as the case may be, to the enrolling clerk of the house ordering such enrollment, who shall deliver such bills or other documents, without delay, in the order of their receipt, to the state printer, who shall receipt for the same, and who shall, without delay, correctly enroll (print) the same, in the order so received by him, and when enrolled he shall deliver such enrolled bills or other documents, with the original thereof, to the enrolling clerk from whom he received

the same, who shall carefully compare such enrolled copy with the original, and if correctly enrolled, he shall report the same back, with the original, to the enrolling committee of the house from which he received it. En. Stats. 1891, 426. Am'd. 1895, 110.

§ 540. State printing fund. Subdivision 1. There is hereby created a fund to be known as the state printing fund of the state treasury.

Subd. 2. The state printing fund shall consist of all moneys appropriated by the legislature for the support of the state printing office, and all moneys received into the state treasury from any source whatever in payment of all printing, ruling, and binding done in the state printing office. From it all expenses for the support of the state printing office shall be paid.

Subd. 3. The reports of all state officers, boards of officers, commissions, trustees, regents, and directors, required or authorized by law to make reports, or to publish any circulars, bulletins, and to obtain any printed books, stationery, or printed matter of any kind, must be printed, ruled, and bound at the state printing office, at the expense of their respective funds or appropriations, after being first authorized in each instance by the state board of examiners.

Subd. 4. The superintendent of state printing, subject to the approval of the board of examiners, shall determine the charge to be made for all printing, ruling, and binding, and shall fix a price from time to time that will cover all costs of material and doing the work, not taking into consideration the cost of the plant of the state printing office. He shall render bills for each item of printing, ruling, and binding, or other charge against the respective officer or institution ordering the same, which bills shall be audited by the state board of examiners and paid out of the appropriation or fund of the said officer or institution chargeable with the same, on warrants drawn by the state controller.

Subd. 5. The controller and treasurer are hereby authorized and directed to transfer from the general fund to the state printing fund any and all moneys appropriated from time to time by the legislature for the support of the state printing office.

Subd. 6. The superintendent of state printing shall render monthly reports to the state controller of all moneys received under the provisions of this section, and shall pay same into the state treasury to the credit of the state printing fund.

Subd. 7. The board of examiners may at any time order the controller to transfer money from the sum allowed to any officer, board, or other body mentioned in subdivision three of this section, for printing and other work at the state printing office, to the credit of any other such officer, board, or other body that may need the same, and whose allowance for that purpose has been exhausted.

Sec 2. All acts and parts of acts in conflict with this act are hereby repealed. En. Stats. 1899, 68.

ARTICLE XIII.

STATE GEOLOGIST.

§ 548. General duties of.
§ 549. Report to governor.
§ 550. Specimens to be delivered to university.
§ 551. Salary of geologist.
§ 552. Compensation of assistants.
§ 553. Board of examiners to audit accounts.
§ 554. Reports and maps to be sold, etc.

§ 548. General duties of. It is the duty of the state geologist, with the aid of such assistants as he may appoint, to continue, and, with all reasonable diligence, to complete the geological survey of this state. He must also prepare a report of the survey and superintend the publication thereof in the form of a geological, botanical, zoological, and physiographical history of the state, with full and scientific descriptions of its rocks, fossils, soils, minerals, mines, climates, and physical geography, together with suitable and accurate geological and topographical maps and diagrams of the same. En. March 12, 1872.

State geologist, appointment and term of office: Ante, secs. 368, subd. 3, 369.

Geological survey, act to continue: Stats. 1872, p. 355. Of this act the code commissioners say it was probably intended to be repealed by the act of 1873-4, p. 694.

§ 549. Report to governor. He must, as near as may be, at the beginning of each session of the legislature,

present to the governor, who must lay the same before the legislature, a report of progress, in which the operations of the geological survey during the interval since his last preceding report must be set forth, and its most important results made public. En. March 12, 1872.

§ 550. Specimens to be delivered to university. The geological and other specimens collected by the state geological survey must, excepting such as may be required by the state geologist to aid in the preparation of his report, be delivered over to the regents of the state university, to be by them deposited in the cabinet of the same as the property of the university. En. March 12, 1872.

Specimens to be turned over to the university: See Stats. 1874, p. 694.

§ 551. Salary of geologist. The annual salary of the state geologist is six thousand dollars, payable monthly out of any appropriations which may be made by the legislature for the continuation of the work of the survey. En. March 12, 1872.

§ 552. Compensation of assistants. His assistants receive such compensation as he may determine, payable in the same manner, out of the same fund. En. March 12, 1872.

§ 553. Board of examiners to audit accounts. The accounts of the state geologist, including salaries and all other expenses of the survey, must be audited by the board of examiners, and, if found correct, must be paid out of the state treasury in such manner as may be provided by law. En. March 12, 1872.

Board of examiners: Secs. 654 et seq.

§ 554. Reports and maps to be sold, etc. The volumes and maps of the report must be sold upon such terms as the governor deems to be most advantageous to the state, and any moneys derived from such sales must be applied to the completion of the unfinished publications of the survey, and the surplus, if any, must be paid into the common school fund of the state. En. March 12, 1872.

Acts relating to geological survey, reference to: See General Laws, title Geological Survey.

ARTICLE XIV.

SEALERS OF WEIGHTS AND MEASURES.

§ 561. General duties of.
§ 562. County clerks ex-officio sealers.
§ 563. Duties of county sealers.
§ 564. Standards for county sealers.
§ 565. Standards to be marked.
§ 566. Standards, county sealers to compare, etc.
§ 567. Fees.

§ 561. General duties of. The state sealer of weights and measures has the general supervision of the weights and measures of the state. He must take charge of the standards, and see that they are kept in and in no case removed from a fire-proof vault in his office, except for the purpose of comparing and copying. He must correct the standards of the cities and counties, provide them with the necessary standards, balances, and other means of adjustment, and as often as once in ten years compare the same with those in his possession. En. March 12, 1872.

Weights and measures: Secs. 3209-3223. False: Pen. Code, secs. 552-555. Secretary of state ex-officio sealer of: Ante, sec. 351.

Act relating to weights and measures: See act approved April 6, 1891; Stats. 1891, p. 487. See reference to this act in General Laws, title Weights and Measures.

§ 562. County clerks ex-officio sealers. The county clerks are ex-officio county sealers of weights and measures for their respective counties. En. March 12, 1872.

§ 563. Duties of county sealers. The county sealers must keep in their offices the standards of weights and measures for their respective counties. En. March 12, 1872.

§ 564. Standards for county sealers. Copies of the original standards, to be made of such materials as the state sealer directs, must be deposited by him in the offices of the county sealers of the several counties of this state, at the expense of the counties, which are severally responsible for the preservation of the copies respectively delivered to them. En. March 12, 1872.

§ 565. Standards to be marked. The state sealer must cause to be impressed on each of the copies of such origi-

nal standards the letter "C," and such other device as he may direct for the particular county, which device must be recorded in the state sealer's office, and a copy thereof delivered to the respective county sealers. En. March 12, 1872.

§ 566. **Standards, county sealers to compare, etc.** The county sealers must compare all weights and measures, which are brought to them for that purpose, with the copies of standards in their possession, and when the same are found or made to conform to the legal standards, the officer comparing them must seal and mark them as correct. En. March 12, 1872.

§ 567. **Fees.** Each county sealer may receive for his services the following fees: For sealing and marking every beam, seventy-five cents; for sealing and marking measures of extension, at the rate of forty cents per yard, not to exceed one dollar and a half for any one measure; for sealing and marking every weight, twenty-five cents; for sealing and marking liquid and dry measures, if the same are of the capacity of a gallon or more, forty cents; if less than a gallon, twenty cents. En. March 12, 1872.

ARTICLE XV.

INSPECTOR OF GAS METERS.

§ 577. To provide testing apparatus.
§ 578. Seal.
§ 579. May appoint deputies.
§ 580. Mode of inspecting and sealing.
§ 581. Using uninspected meters, reinspection.
§ 582. Compensation.
§ 583. Residence.
§ 584. Official bond.

§ 577. **To provide testing apparatus.** The inspector of gas meters must provide and keep suitable apparatus for testing the accuracy of gas meters. En. March 12, 1872.

Inspector of gas meters, appointment and term of office: Ante, secs. 368, 369.

§ 578. **Seal.** He must provide a suitable seal with which to seal meters inspected by him and found to be correct and must file a copy of such seal in the office of the secretary of state. En. March 12, 1872.

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§ 579. May appoint deputies. He may appoint deputies. En. March 12, 1872.

§ 580. Mode of inspecting and sealing. He must, whenever requested, inspect and test the accuracy of any gas meters used or intended to be used for measuring the quantity of gas furnished by any gas company in this state, and when he finds the same correct, seal the same with his seal. No meter shall be accounted correct which registers an amount more than three per cent greater or less than the amount actually passed through it, but the inspector may seal meters registering more than three per cent against the gas company, when requested by the company to do so. Reasonable notice shall be given to the applicant, and also the individual or gas company furnishing or proposing to furnish the gas, of the time and place of the inspection of the meter, and opportunity afforded them, their servants or agents, to be present at and witness the inspection. En. March 12, 1872. Am'd. 1875-6, 22.

§ 581. Using uninspected meters, reinspection. Any individual or gas company placing or using for measuring gas a meter which has not been inspected by the state inspector, and does not bear his seal, shall be guilty of a misdemeanor, nor shall any charge for gas supplied through such a meter be legally collectible; nor shall the refusal of a consumer to pay the same give authority to the company to refuse to supply him with gas. When a meter, properly sealed, is once placed for the use of a consumer, an inspection may be had as often as the consumer may request the same in writing, he to pay the fee therefor whenever the meter is found not to register too fast. When the meter is found to register too fast the gas company must pay the fee, together with the costs of removing and resetting the meter, and the inspector shall remove the seal if there be one upon it; provided, that when any meter found incorrect shall be corrected, it shall be sealed by the inspector without additional charge if presented to him for reinspection within one month. En. March 12, 1872. Am'd. 1875-6, 22.

§ 582. Compensation. He may collect a fee of two dollars and fifty cents for each meter tested. En. March 12, 1872.

§ 583. Residence. He must reside in the city of San Francisco. En. March 12, 1872.

§ 584. Official bond. He must execute an official bond in the sum of five thousand dollars. En. March 12, 1872.

Official bonds: See post, secs. 947-986.

ARTICLE XVI.

INSURANCE COMMISSIONER.

§ 594. Eligibility.
§ 595. General duties of.
§ 596. Business of insurance not to be transacted without his certificate.
§ 597. To examine affairs of companies, when.
§ 598. Fines imposed if companies refuse.
§ 599. May issue subpœnas.
§ 600. Proceedings on insolvency of companies.
§ 601. Proceedings on failure to make up capital.
§ 602. What constitutes insolvency.
§ 603. Must keep a record.
§ 604. May employ actuary, when.
§ 605. Fees to be paid to commissioner.
§ 606. Assessments for deficiency in salary and expenses.
§ 607. Certain certificates to be filed in his office.
§ 608. Same.
§ 609. May determine name of new corporation.
§ 610. Statements to be made by insurance companies.
§ 611. Statement, contents, publication and filing.
§ 612. Showing to be made in.
§ 613. Statement by life, health, and accident companies.
§ 614. Stock notes, how computed.
§ 615. To furnish blanks.
§ 616. Agent upon whom process may be served.
§ 617. Penalty for failure to make statement.
§ 618. Securities deposited by companies.
§ 619. Deposits, receipts for.
§ 620. Deposits returned, when.
§ 621. Examination of securities, deficiencies.
§ 622. Retaliatory clause.
§ 622a. Foreign insurance corporations other than life, tax on premiums.
§ 623. Bonds to be filed.
§ 624. Same.
§ 625. To furnish assessor with certain information.
§ 626. Securities.
§ 627. Statement to be based on gold coin values.
§ 628. Salary of commissioner.
§ 629. Salary of deputy.
§ 630. Contingent expenses.
§ 631. Location of office.
§ 632. Official bond.
§ 633. Conditions precedent to license of agent.
§ 634. Registry of policies, deposits for security of.

§ 594. Eligibility. No person is eligible to the office of insurance commissioner or deputy who is an officer, agent,

or employee of an insurance company. En. March 12, 1872.

Cal.Rep.Cit. 101, 144; 128, 537.

§ 595. General duties of. The insurance commissioner must receive all bonds and securities of persons engaged in the transaction of insurance business in this state, and file and safely keep the same in his office, or deposit them as provided in this article. He must examine and inspect the financial condition of all persons engaged, or who desire to engage, in the business of insurance; issue a certificate of authority to transact insurance business in this state to any persons in a solvent condition, who have fully complied with the laws of this state, and are in nowise in arrears to the state, or to any county or city of the state, for fees, licenses, taxes, or penalties accrued upon business previously transacted in the state; determine the sufficiency and validity of all bonds and other securities required to be given by persons engaged, or to be engaged, in insurance business, and cause the same to be renewed in case of the insufficiency or invalidity thereof; and perform all other duties imposed upon him by the laws regulating the business of insurance in this state, and enforce the execution of such laws; prepare and furnish, on demand, to all persons engaged in the insurance business, blank forms for such statements or reports as may by law be required of them; make, on or before the first day of August in each year, a report to the governor of this state, containing a tabular statement and synopsis of the reports which have been filed in his office, showing, generally, the condition of the insurance business and interests in this state, and other matters concerning insurance, and a detailed statement, verified by oath, of the moneys and fees of office received by him, and for what purpose. And whenever any insurance company, doing business in this state, shall voluntarily surrender to the insurance commissioner its certificate of authority previously granted, thereby withdrawing from business in this state, the commissioner must make due publication of such surrender and withdrawal daily for the period of one week, in each of two daily newspapers, the one published in the city of San Francisco, and the other in the city of Sacramento. It is further enacted, that if any action hereafter commenced in any district

court of this state, by a citizen thereof, against a foreign corporation or company doing insurance business in this state, such corporation or company shall transfer, or cause to be transfered, such action to the United States circuit court, the right of such corporation or company to transact insurance business in this state shall thereupon and thereby cease and determine; and the insurance commissioner shall immediately revoke the certificate of such corporation or company authorizing it to do business in this state, and publish such revocation daily, for the period of two weeks, in each of some two daily newspapers, the one published in the city of San Francisco, and the other in the city of Sacramento. En. March 12, 1872. Am'd. 1873-4, 8; 1877-8, 13.

Cal.Rep.Cit. 128, 539.

Insurance: See Civ. Code, secs. 2527-2766.

Insurance corporations: See Civ. Code, secs. 414-451.

Report of insurance commissioner, distribution of: Ante, sec. 337.

§ 596. Business of insurance not to be transacted without his certificate. No person or company must transact insurance business in this state without first procuring from the insurance commissioner a certificate of authority, as in this chapter provided; and all policies issued or renewed and all insurances taken before obtaining such certificate of authority, are null and void; and any person who as agent or pretended agent of any insurance company, or other person, shall, without the possession of such certificate of authority, solicit, issue or procure to be issued in this state any policy of insurance, shall forfeit to the people of this state the sum of two hundred dollars for each and every policy so issued, or procured to be issued. But any company or corporation belonging to any other state or country, having policies of life insurance outstanding in this state, and that were issued in accordance with the laws of this state, shall have the right to maintain a special agent in this state, for the collection of renewal premiums on such policies, and the commissioner is hereby authorized to issue to the duly appointed special agent of such company or corporation, a certificate authorizing him to collect such renewal premium; such certificate to be issued on the production to the commis-

sioner of satisfactory evidence that such company or corporation is authorized to transact life insurance business in the state or country to which it belongs. And any person who, as agent of either the insured or insurer, shall collect such renewal premiums, must, on or before the tenth day of January, annually, file with the commissioner a statement, under oath, showing the gross amount of such annual premiums, collected by him during the year ending on the thirty-first day of December, next preceding, and pay into the office of the commissioner the sum of twenty dollars, gold coin of the United States. Failing to make such statement and payment within the time named, such person shall forfeit to the people of the state of California the sum of one hundred dollars for each and every policy so renewed by the payment to him of such renewal premium. All penalties and forfeitures under this section must be collected by the insurance commissioner, and for the purposes of such collections suits may be instituted by him, in the name of the people of the state of California, in any court of competent jurisdiction. En. March 12, 1872. Am'd. 1873-4, 9; 1873-4, 61; 1877-8, 13; 1880, 89.

Cal.Rep.Cit. 80, 40; 98, 7.

§ 597. To examine affairs of companies, when. The commissioner, whenever necessary, or whenever he is requested by verified petition, signed by three persons interested, either as stockholders, policy holders, or creditors of any person engaged in insurance business, showing that such person is insolvent under the laws of this state, must make examination of the business and affairs relating to the insurance business of such person; and for such purpose has free access to all the books and papers of such person, and must thoroughly inspect and examine all his affairs, and ascertain his condition and ability to fulfill his engagements, and whether he has complied with all the provisions of law applicable to his insurance transactions. Such person and his officers and agents must open his books and papers for the inspection of the commissioner, and otherwise facilitate such examination; and the commissioner may administer oaths and examine under oath, any persons relative to the business of such person; and if he finds the books to have been carelessly or improperly kept or posted, he must employ

sworn experts to rewrite, post, and balance the same, at the expense of such person. Such examination must be conducted in the county where such person has his principal place of business, and must be private, unless the commissioner deems it necessary to publish the result of such investigation, in which case he may publish the same in two of the public newspapers of this state, one of which must be published in the city of San Francisco. En. March 12, 1872.

§ 598. Fines imposed if companies refuse. The commissioner may collect the sum of five hundred dollars from any person engaged in the business of insurance, for each refusal to give full and truthful information, and response in writing, to any inquiry in writing by the commissioner relating to the business of insurance as carried on by him; and for that purpose suits may be instituted by the commissioner, in the name of the people of the state of California, in any court of competent jurisdiction. En. March 12, 1872.

§ 599. May issue subpœnas. The commissioner may issue subpœnas for witnesses to attend and testify before him on any subject touching insurance business, or in aid of his duties, which must be served, obeyed, and enforced as provided in the Code of Civil Procedure for civil cases, the commissioner to issue attachments and impose the penalty for disobedience; and, in addition, the defaulting witness may be punished as provided in the Penal Code. En. March 12, 1872.

§ 600. Proceedings on insolvency of companies. Whenever the commissioner ascertains that any person engaged in the insurance business is insolvent within the meaning of this chapter, he must revoke the certificate granted, and send by mail to such person, addressed to him at his principal place of business, or deliver to him personally, notice of such revocation, and cause notice thereof to be filed in his office, and also to be published daily for four weeks in some newspaper published in the city of San Francisco. He must require such person, after receiving notice of the revocation, or after the first publication thereof, to discontinue the issuing of any new policies, and the renewal of any previously issued; and in such cases must require the person, or the manager or agent

of the business, to repair the capital thereof within such period as he may designate in such requisition, by assessment upon the stockholders for such amounts as will make the capital equal to the amount of the paid-up capital, exclusive of assets needed to pay all ascertained liabilities for losses reported, for expenses and taxes, and exclusive of the entire premiums received for outstanding risks. En. March 12, 1872.

Cal.Rep.Cit. 101, 145.

§ 601. Proceedings on failure to make up capital. In case any person, upon the requisition of the commissioner, fails to make up the deficiency of the capital in accordance with the requirements of this chapter, or to comply in all respects with the laws of this state, the commissioner must communicate the fact to the attorney-general, who must within twenty days after receiving such communication, commence an action in the name of the people of this state, in the superior court of the county where the person in question is located, or has his principal office, against such person, and apply for an order requiring cause to be shown why the business should not be closed; and the court must thereupon hear the allegations and proofs of the respective parties, as in other cases. If it appears to the satisfaction of the court that such person is insolvent, or that the interests of the public so require, the court must decree a dissolution of such corporation, and a winding-up of its affairs, and a distribution of the effects of such person; but otherwise, the court must enter a decree annulling the act of the commissioner in the premises, and authorizing such person to resume business. But the commissioner must not be held liable for damages if he has acted in good faith. In the event of any additional losses occurring upon new risks taken after the expiration of the period limited by the commissioner in the requisition, and before deficiency has been filled up, the directors of any company, corporation, or association, are individually liable to the extent thereof. En. March 12, 1872. Am'd. 1880, 19; 1887, 7.

Cal.Rep.Cit. 101, 138; 101, 143; 101, 145; 101, 146.

§ 602. What constitutes insolvency. Wherever provisions for the liabilities of any person engaged in the business of fire, marine, or inland navigation insurance in this state, for losses reported, expenses, taxes, and

reinsurance of all outstanding risks, estimated at fifty per cent of the premiums received and receivable on all fire risks and marine time risks, at the full premiums received and receivable on all other marine risks, would so far impair his capital stock paid in as to reduce the same below two hundred thousand dollars, or below seventy-five per cent of said capital stock paid in, such person is insolvent; and in the case of a person engaged in such insurance in this state, on the mutual plan, if the available cash assets of such person shall not exceed his liabilities, as hereinbefore enumerated, in the full sum of two hundred thousand dollars, such person is insolvent; and wherever provision for the liabilities of any person engaged in any kind of insurance business in this state, other than life and insurance of titles to real estate, provided for in section four hundred and twenty of the Civil Code of this state, for losses reported, expenses, taxes, and reinsurance of all outstanding risks, estimated at such rates as are accepted by the insurance authorities of the state of New York, would so far impair his capital stock paid in as to reduce the same below one hundred thousand dollars, or below seventy-five per cent of said capital stock paid in, such person is insolvent; and in case of a person engaged in such insurance business in this state, on the mutual plan, if his available cash assets shall not exceed his liabilities, as hereinbefore enumerated, in the full sum of one hundred thousand dollars, such person is insolvent. In the case of a company or a corporation engaged in the business of life insurance, whenever its liabilities for losses reported, expenses, taxes and reinsurance of all its outstanding risks, at rates based upon the American Experience Table of Mortality, and interest at the rate of four and one half per centum per annum, exceeds its assets, such company or corporation is insolvent. In the case of a corporation or company engaged in the business of insurance of the title to real estate, whenever provision for its liability for losses reported, expenses, and taxes, would, after exhausting its surplus fund, so far impair its capital stock paid in as to reduce the same below one hundred thousand dollars, or below seventy-five per cent of said capital stock paid in, such corporation or company is insolvent. En. March 12, 1872. Am'd. 1873-4, 9; 1873-4, 62; 1877-8, 14; 1887, 19.

Cal.Rep.Cit. 101, 144; 101, 145.

§ 603. Must keep a record. The commissioner must keep and preserve, in a permanent form, a full record of his proceedings, including a concise statement of the condition of each person visited or examined by him. En. March 12, 1872.

§ 604. May employ actuary, when. The commissioner may employ an actuary to make the valuation of life policies, at the compensation of not exceeding three cents for each thousand dollars of insurance, to be paid by the person or corporation for which the valuation is made. En. March 12, 1872.

§ 605. Fees to be paid to commissioner. The commissioner must require in advance, in United States gold coin, the following fees:

1. For filing the articles of incorporation, or certified copy of articles, or other certificate required to be filed in his office, thirty dollars;
2. For filing the annual statement required to be filed, twenty dollars;
3. For filing any other papers required by this chapter to be filed, five dollars;
4. For furnishing copies of papers filed in his office, twenty cents per folio;
5. For certifying copies, one dollar each;
6. For each certificate issued as provided in section 619, the sum of five dollars. En. March 12, 1872.

§ 606. Assessments for deficiency in salary and expenses. If the salary of the commissioner and the expenses of his office exceeds the fees and charges collected by him, such excess must be annually assessed by the commissioner upon all persons or incorporations engaged in the business of insurance in this state, and they are severally liable therefor, pro rata, according to the amount of premiums received or receivable from risks taken in this state, respectively, during the year ending on the thirty-first day of December next preceding the assessment. The commissioner must collect all fees and assessments, and pay monthly into the state treasury whatever amounts may be received and collected by him. He may bring actions in the name of the people of this state to enforce such collection; and any person liable for any

assessment, who neglects or refuses to pay the amount of such assessment within ten days after demand thereof, in writing, by the insurance commissioner, becomes liable to pay double the amount of such assessment, and any judgment recovered in such case must be for such double amount and costs. En. March 12, 1872.

Cal.Rep.Cit. 117, 242.

§ 607. Certain certificates to be filed in his office. The commissioner must cause every corporation or person, before engaging in the business of insurance, to file in his office as follows:

1. If incorporated under the laws of this state, a copy of the articles of incorporation or statement of any increase or diminution of the capital stock, certified by the secretary of state to be a copy of that which is filed in his office.

2. If incorporated under the laws of any other state or country, a copy of the articles of incorporation, if organized or formed under any law requiring articles to be filed, duly certified by the officer having the custody of such articles; or if not so organized, a copy of the law, charter, or deed of settlement under which the deed of organization is made, duly certified by the proper custodian thereof or proved by affidavit to be a copy; also, a certificate under the hand and seal of the proper officer of such state or country having supervision of insurance business therein, that such corporation or company is organized under the laws of such state or country, with the amount of capital stock or assets required by this chapter.

3. If not incorporated, a certificate setting forth the nature and character of the business, the location of the principal office, the names of the persons and of those composing the association, the amount of actual capital employed or to be employed therein, and the names of all officers and persons by whom the business is or may be managed. The certificate must be verified by the affidavit of the chief officer, secretary, agent, or manager of the association; and if there are any written articles of agreement or association, a copy thereof must accompany such certificates; provided, however, when the number of persons composing such association shall exceed ten, such certificate need not state the names of

any greater number of persons than ten, who shall be the largest shareholders; and if such association of persons be formed out of the United States, the said certificate need not contain the names of any officers or managers other than those resident within the United States, nor any statement of capital not employed within the United States, and the affidavit may be made by the chief executive officer or manager in the United States. En. March 12, 1872. Am'd. 1887, 8.

§ 608. **Same.** He must require from every insurance association not formed under the laws of this state, or not incorporated, carrying on the business of insurance by an agent:

1. A certified or verified power of attorney, or written authority to such agent;

2. A notice of any change of agents or in the powers of any agent, within ninety days after such change, and a certified copy of any new or further power of attorney or authority before the same is acted under;

3. When by any law, agreement, or other writing, any change is made in respect to any of the particulars set forth in the certificate on file, a certified copy of such law, agreement, or other writing, verified respectively as certificates are required to be verified; also, a notice of such change before the same is acted under. En. March 12, 1872.

§ 609. **May determine name of new corporation.** The commissioner must require the name under which any corporation hereafter proposes to be formed or organized under the laws of this state for the transaction of insurance business, to be submitted to him before the commencement of such business; and he may reject any name or title so submitted when the same is an interference with or too similar to one already appropriated, or likely to mislead the public in any respect; and in such case a name not liable to such objection must be chosen. En. March 12, 1872.

§ 610. **Statements to be made by insurance companies.** The commissioner must require from every corporation or person doing the business of insurance in this state, statements verified as follows:

1. If it be made by a corporation organized under the

laws of this state, by the oaths of the president and secretary, or the vice-president and secretary thereof.

2. If it be made by an individual or firm, by the oath of such individual or a member of the firm.

3. If made by a foreign insurance company or person, by the oath of the principal executive officer thereof, or manager residing within the United States. En. March 12, 1872. Am'd. 1873-4, 10; 1887, 9.

§ 611. Statement, contents, publication and filing. All corporations or persons doing the business of insurance in this state must make and file with the insurance commissioner, on or before the fifteenth day of January of each year, a statement, verified by the oath of the principal executive officer or manager residing in this state, showing the business done in this state during the year ending the thirty-first day of December then next preceding. They shall also make and file with said commissioner, at the times hereinafter mentioned, further statements, which must exhibit the condition and affairs of every such corporation, person, firm, or association, on the thirty-first day of December then next preceding, which statements, as adjusted by the commissioner upon a proper examination of the same, must be published by such corporation, person, firm, or association, daily, for the period of one week, in some newspaper published in the city where the principal office in this state is located. Such statement, if made by a person or corporation organized under the laws of this state, must be filed with the commissioner on or before the first day of February of each year. If made by a person or persons residing in, or corporation organized under the laws of any other of the states or territories of the United States, it must be filed on or before the tenth day of March of each year. And if made by a person, or corporation organized under the laws of any country foreign to the United States, it must be filed on or before the first day of May of each year. En. March 12, 1872. Am'd. 1873-4, 10; 1877-8. 15; 1887, 9.

§ 612. Showing to be made in. Such statement, if made by fire, marine, and inland insurance companies, or by companies organized under section four hundred and twenty of the Civil Code, must show:

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First—The amount of the capital stock of the company.

Second—The property or assets held by the company, specifying:

1. The value of real estate held by said company.

2. The amount of cash on hand and deposited in banks to the credit of the company, specifying the same.

3. The amount of cash in the hands of agents, and in course of transmission.

4. The amount of loans secured by bonds and mortgages, constituting the first lien on real estate, on which there is less than one year's interest due or owing.

5. The amount of loans on which interest has not been paid within one year previous to such statement.

6. The amount due the company on which judgments have been obtained.

7. The amount of stocks of this state, of the United States, or any incorporated city of this state, and of any other stocks owned by the company, specifying the amount, number of shares, and par and market value of each kind of stocks.

8. The amount of stocks held as collateral security for loans, with the amount loaned on each kind of stock, its par value and market value.

9. The amount of interest due and unpaid.

10. The amount of all other loans made by the company, specifying the same.

11. The amount of premium notes on hand on which policies are issued.

12. All other property belonging to the company, specifying the same.

Third—The liabilities of such company, specifying:

1. The amount of losses due and unpaid.

2. The amount of claims for losses resisted by the company.

3. The amount of losses in process of adjustment or in suspense, including all reported or supposed losses.

4. The amount of dividends declared, due and remaining unpaid.

5. The amount of dividends declared, but not due.

6. The amount of money borrowed and security given for the payment thereof.

7. Gross premium (without any deductions) received and receivable upon all unexpired fire risks, running one

year or less from date of policy, reinsurance thereon at fifty per cent.

8. Gross premiums (without any deductions) received and receivable upon all unexpired fire risks running more than one year from the date of policy, reinsurance thereon pro rata.

9. Gross premiums (without any deductions) received and receivable upon all unexpired marine and inland navigation risks, except time risks, reinsurance thereon, at one hundred per cent.

10. Gross premiums (without any deductions) received and receivable on marine time risks, reinsurance thereon at fifty per cent.

11. Amount reclaimable by the insured on perpetual fire insurance policies, being ninety-five per cent of the premiums or deposit received.

12. Reinsurance fund and all other liabilities, except capital, under the life insurance or any other special department.

13. Unused balances of bills and notes taken in advance for premiums on open marine and inland policies, or otherwise, returnable on settlement.

14. Principal unpaid on scrip or certificates of profits, which have been authorized or ordered to be redeemed.

15. Amount of all other liabilities of the company, specifying the same.

Fourth—The income of the company during the preceding year, specifying:

1. The amount of cash premiums received.

2. The amount of notes received for premiums.

3. The amount of interest money received, specifying the same.

4. The amount of income received from all other sources, specifying the same.

Fifth—The expenditures of the preceding year, specifying:

1. The amount of losses paid.

2. The amount of dividends paid.

3. The amount of expenses paid, including commissions and fees to agents and officers of the company.

4. The amount paid for taxes.

5. The amount of all other payments and expenditures.

Sixth:

1. The amount of risks written during the year.

2. The amount of risks expired during the year.

3. The amount of risks written during the year in the state of California.

4. The amount of premiums thereon.

Provided, that any foreign fire, marine, or inland insurance company, incorporated or not incorporated, doing business within this state, having on deposit at any place within the United States, assets to the amount of two hundred thousand dollars over and above its liabilities in the United States, as security for the policy holders therein, may at its option make a separate statement to the insurance commissioner of its foreign business and assets, but shall be required to return only the business done in the United States, and the assets held by or for it within the United States for the protection of policy holders therein. En. March 12, 1872. Am'd. 1877-8, 15; 1887, 9. Nev Sec 612 1905-379

§ 613. Statement by life, health, and accident companies. Such statement, if made by life, health, and accident companies, must show:

First—The amount of the capital stock of the company.

Second—The property or assets held by the company, specifying:

1. The value of the real estate held by the company.

2. The amount of cash on hand and deposited in banks to the credit of the company, specifying the same.

3. The amount of loans secured by bond and mortgage on real estate, specifying the same.

4. Amount of loans secured by pledge of bonds, stocks, or other marketable securities as collateral, specifying the same.

5. Cash market value of all stocks and bonds owned by the company, specifying the same.

6. Interest due the company and unpaid.

7. Interest accrued, but not due.

8. Premium notes and loans in any form taken in payment of premiums on policies now in force.

9. Gross amount of premiums in process of collection and transmission on policies in force.

10. Gross amount of deferred premiums.

11. All other assets, specifying the same.

Third—Liabilities.

1. Claims for death losses and matured endowments, due and unpaid.

2. Claims for death losses and matured endowments in process of adjustment, or adjusted and not due.

3. Claims resisted by the company.

4. Amounts due and unpaid on annuity claims.

5. Trust fund, on deposit, or net present value of all the outstanding policies, computed according to the American Experience Tables of Mortality, with four and one half per cent interest.

6. Additional trust fund on deposit, or net present value of extra and special risks, including those on impaired lives.

7. Amount of all unpaid dividends of surplus percentages, bonuses, and other description of profits to policy holders, and interest thereon.

8. Amount of any other liability to policy holders, or annuitants not included above.

9. Amount of dividends unpaid to stockholders.

10. Amount of national, state, and other taxes due.

11. All other liabilities, specifying the same.

Fourth—Income.

1. Cash received for premiums on new policies during the the year.

2. Cash received for renewal of premiums during the year.

3. Cash received for purchase of annuities.

4. Cash received for all other premiums.

5. Cash received for interest on loans, specifying the same.

6. Rents received.

7. Cash received from all other sources, specifying the same.

8. Gross amount of notes taken on account of new premiums.

9. Gross amount of notes taken on account of renewal premiums.

Fifth—Expenditures.

1. Cash paid for losses.

2. Cash paid to annuitants.

3. Cash paid for lapsed, surrendered, and purchased policies.
4. Cash paid for dividends to policy holders.
5. Cash paid for dividends to stockholders.
6. Cash paid for reinsurances.
7. Commission paid to agents.
8. Salaries and other compensation of officers and employees, except agents and medical examiners.
9. Medical examiners' fees and salaries.
10. Cash paid for taxes.
11. Cash paid for rents.
12. Cash paid for commuting commissions.
13. All other cash payments.

Sixth—Balance sheet of premium note account.

Seventh—Balance sheet of all the business of the company.

Eighth:

1. Total amount of insurance effected during the year on new policies.
2. Total amount of insurance effected during the year in the state of California.
3. Premiums received during the year on risks written in the state of California. En. March 12, 1872.

§ 614. **Stock notes, how computed.** Mutual companies formed, existing, and doing business under an act entitled "An act to provide for the incorporation of mutual insurance companies," passed April twenty-sixth, eighteen hundred and fifty-one, may report their approved stock notes as capital paid up, and such notes for all purposes must be deemed part of the paid-up capital stock of such corporation. En. March 12, 1872.

§ 615. **To furnish blanks.** The insurance commissioner must cause to be prepared, and furnish to each person and to each of the companies incorporated in this state, and to the attorney of each of the companies incorporated or chartered by other states and foreign governments, printed forms of the statements herein required; and he may make such changes from time to time in the form of the same as seems to him best adapted to elicit from the companies a true exhibit of their condition in respect to the several points hereinbefore enumerated.

The same forms must be addressed to all persons and companies engaged in the same kind of business. En. March 12, 1872.

§ 616. Agent upon whom process may be served. The insurance commissioner must require, as a condition precedent to the transaction of insurance business in this state by any foreign corporation or company, that such corporation or company must file in his office the name of an agent and his place of residence in this state, on whom summons and other process may be served in all actions or other legal proceedings against such corporation or company. All process so served gives jurisdiction over the person of such corporation or company. The agent so appointed and designated shall be deemed in law a general agent, and must be the principal agent or chief manager of the business of such corporation or company in this state. Any such foreign corporation or company shall, as a further condition precedent to the transaction of insurance business in this state, and in consideration of the privilege to transact such insurance business in this state, make and file with the insurance commissioner an agreement or stipulation, executed by the proper authorities of such corporation or company, in form and substance as follows: The (giving name of corporation or company) does hereby stipulate and agree, that in consideration of the permission granted by the state of California to it to transact insurance business in this state, that if at any time said corporation or company shall be without an agent in said state, on whom summons or other legal process may be served, service of such summons or other legal process may be made upon the insurance commissioner, such service upon the commissioner to have the same force and effect as if made upon the corporation or company. Whenever such service of summons or other legal process shall be made upon the insurance commissioner, he must, within ten days thereafter, transmit by mail, postage paid, a copy of such summons or other legal process to the company or corporation, addressed to the president or secretary thereof, at its home or principal office. Such copy must be certified by the commissioner, under his hand and official seal, and the sending of such copy by the said commissioner shall be a necessary part of the service

of summons or other legal process. En. March 12, 1872. Am'd. 1873-4, 63; 1877-8, 17.

Cal.Rep.Cit. 95, 600; 128, 537; 128, 538; 128, 539.

Agent upon whom process may be served: See post, sec. 633.

§ 617. Penalty for failure to make statement. The commissioner must collect the sum of one hundred dollars from any company or corporation engaged in the business of insurance in this state, for a failure to make and file in his office within the time prescribed by law, the statements and stipulations required by sections six hundred and ten, six hundred and eleven, six hundred and twelve, six hundred and thirteen, and six hundred and sixteen of this code, and an additional penalty of two hundred dollars for each and every month or fractional part of a month thereafter that such company or corporation continues to transact the business of insurance until such statements and stipulations are filed; and for that purpose suits may be instituted by the insurance commissioner, in the name of the people of the state of California, in any court of competent jurisdiction. And for all lawful expenses incurred under this section or any other section of this code, in the prosecution of any suit or proceeding for the enforcement of the insurance laws of this state, the insurance commissioner must present bills duly certified by him, with the vouchers, to the state board of examiners, who must allow the same and direct payment thereof to be made; and the controller shall draw warrants therefor on the treasurer for the payment of the same to the insurance commissioner (in addition to the ordinary contingent expenses) out of the general fund. En. March 12, 1872. Am'd. 1873-4, 65; 1877-8, 18; 1887, 11.

§ 618. Securities deposited by companies. Whenever the laws of any state of the United States, or of any country foreign to the United States, require any insurance company or corporation organized under the laws of this state to deposit with some officer of this state securities in trust for and for the benefit of the policy holders of such company or corporation, as a prerequisite to transacting insurance business in such other state or foreign country, and whenever, under any laws of this state, any insurance company or corporation is required to deposit with any

officer of this state securities in trust for and for the benefit of policy holders of such company or corporation, the insurance commissioner of this state must receive from such company or corporation securities in the amount required by the law under which such deposit is made, on deposit and in trust for the policy holders of such company or corporation. The value of such securities must be equal to the value in interest-bearing stocks and bonds of the United States government, but none of such securities must be estimated above the par value of the same, nor above their market value. The commissioner must, upon the receipt of such securities, forthwith make a special deposit of the same in the state treasury, in packages marked with the name of the company or corporation from whom received, where they must remain as security for policy holders in the company or corporation to which they respectively belong; but so long as the company or corporation continues solvent, he must permit it to collect the interest or dividends on the securities so deposited, and from time to time withdraw any such securities on depositing other securities in the stead of those to be withdrawn; such new securities to be of the same value mentioned in this section, but such securities must not be withdrawn from the state treasury unless upon the written order of the acting president and secretary of the corporation making the deposits, which order must be indorsed by the commissioner, or upon the order and authority of some court of competent jurisdiction. En. March 12, 1872. Am'd. 1877-8, 18.

§ 619. Deposits, receipts for. Whenever any insurance company or corporation has deposited with the commissioner the requisite security, in conformity with the requirements of the preceding section, the commissioner must issue to such company or corporation a certificate, under his official seal, of such deposit, for each state or country requiring the same; which said certificate must state the items and amount of securities so deposited, and that they are of the value therein represented. En. March 12, 1872. Am'd. 1877-8, 19.

§ 620. Deposits returned, when. Whenever any insurance company or corporation so depositing securities with the commissioner, has paid, canceled or reinsured all its

unexpired policies outstanding in the state, satisfactorily to the holders thereof, and all its liabilities under such policies are extinguished or assumed by other responsible companies or corporations, then, if on application of such company, or corporations, verified by the oaths of its president and secretary, and from an examination of the books of the corporation, and of its officers, under oath, the insurance commissioner is satisfied that all of its policies are so paid, canceled, extinguished, or reinsured, he must deliver up to the corporation the securities deposited. And whenever the laws of any other state or country, by reason of which section six hundred and twenty-two of the Political Code of this state is brought into force, shall be repealed and abrogated, and any deposit which shall have been made with the commissioner, under and by reason of said section six hundred and twenty-two of the Political Code, must be delivered up to the company or corporation making the deposit. En. March 12, 1872. Am'd. 1877-8, 19.

§ 621. Examination of securities, deficiencies. The commissioner must make an annual examination of tne securities received by him from each insurance company or corporation, and if it appear at any time that the securities deposited by any such company or corporation amount to less than the sum required for the purposes for which the deposit was made, he must notify the company or corporation thereof, and unless the deficiency is made up within thirty days after notice the commissioner must countermand all the certificates he may have issued to the company or corporation under this chapter, and give notice thereof to the officers of the several states to whom the certificate may have been transmitted; and he must also publish the notice for three weeks successively in some daily newspaper published in the city of San Francisco, at the expense of the company or corporation, to be collected by assessment upon the company or corporation, or its duly appointed agent in this state. En. March 12, 1872. Am'd. 1877-8, 19.

§ 622. Retaliatory clause. When by the laws of any other state or country, any taxes, fines, penalties, licenses, fees, deposits of money, or of securities, or other obligations, or prohibitions, are imposed on insurance companies of this

state, doing business in such other state or country, or upon their agents therein, in excess of such taxes, fines, penalties, licenses, fees, deposits of securities, or other obligations or prohibitions, imposed upon insurance companies of such other state or country, so long as such laws continue in force, the same obligations and prohibitions of whatsoever kind must be imposed upon insurance companies of such other state or country doing business in this state. And whenever under this section any deposit of security shall be made in this state, such deposit shall be made in stocks or bonds of the United States government, or in those of the state of California, or in interest-bearing bonds of any of the counties or incorporated cities and towns of the state of California not in default for interest on such bonds, which said securities must be estimated at not exceeding their par value nor their market value. En. March 12, 1872. Am'd. 1873-4, 11; 1877-8, 20; 1897, 242.

Cal.Rep.Cit. 74, 122.

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§ 622a. Foreign insurance corporations other than life, tax on premiums. Every insurance company or association other than life, not organized or incorporated under the laws of California, and doing business in this state, and every other insurance company, other than life, whose charter may be owned, or a majority of whose stock may be controlled, or whose business shall be carried on in the interest, or for the benefit of any insurance company or association not organized or incorporated under the laws of California, shall annually pay to the insurance commissioner, as taxes, two (2) per cent upon the amount of the gross premiums received upon its business done in this state, during the year ending on the preceding thirty-first day of December, less return premiums, reinsurance in companies or associations authorized to do business in this state and losses actually paid on its business in this state.

This section shall not be held or construed so as to relieve any company or organization from any tax, fee or other obligation or charge imposed upon it by the provisions of section 622 of this code, but the taxes imposed by said section, and paid to the insurance commissioner by any such company or association under the provisions of said section, shall be deducted from the amount to be

paid by such company or association to the insurance commissioner under the provisions of this section.

Sec. 2. This act shall take effect January 1, 1904, and all of the provisions hereof shall be construed as applying to the business done in the year 1903, and each year thereafter. En. Stats. 1903, 359.

§ 623. Bonds to be filed. The commissioner must require every company, association, or individual, not incorporated under the laws of this state, and proposing to transact insurance business by agent or agents in this state, before commencing such business to file in his office a bond, to be signed by the person or firm, officer or agent, as principal, with two sureties, to be approved by the commissioner, in the penal sum of two thousand dollars for each insurance company, association, firm, or individual for whose account it is proposed to collect premiums of insurance in this state, the conditions of such bonds to be as follows:

1. That the person or firm, agent, or officer named therein, acting on behalf of the company, association, firm, or individual named therein, will pay to the treasurer of the county, or city and county, in which the principal office of the agency is located, such sum per quarter, quarterly in advance, for a license to transact an insurance business, or such other license as may be imposed by law, so long as the agency remains in the hands of the person or firm, officer, or agent named as principal in the bond.

2. That the person or firm, officer, or agent, will pay to the state all stamp or other duties on the gross amounts insured by them, in the manner and at the time prescribed by law, inclusive of renewals on existing policies.

3. That the person, firm, agent, or corporation named therein, will conform to all the provisions of the revenue and other laws made to govern them. En. March 12, 1872.

§ 624. Same. Whenever the same person, firm, officer, or agent desires to collect premiums of insurance for more than one company, association, or individual, not incorporated under the laws of this state, the commissioner must require a separate bond, as provided in the preceding section, for each company or association so represented by such person, firm, officer, or agent. En. March 12, 1872.

Cal.Rep.Cit. 74, 122.

§ 625. To furnish assessor with certain information. The commissioner must, before the commencement of each fiscal year as fixed in the revenue laws, furnish the assessor of the county in which the principal office of any person or corporation doing the business of insurance is situated, all the data concerning premiums collected by, and all other necessary information in relation to the business of such person or corporation as will assist the assessor in the performance of his duties. En. March 12, 1872.

§ 626. Securities. The commissioner must require from every person, before and after engaging in the business of insurance, a full compliance with all the provisions of title II, part IV, division I, of the Civil Code applicable thereto; and every person neglecting to comply with such requirements is subject to the fines and penalties therein prescribed. En. March 12, 1872.

Insurance corporations: See Civ. Code, secs. 414-450.

§ 627. Statement to be based on gold coin values. All statements, estimates, percentages, payments, and calculations required by this chapter to be made, either by the commissioner or persons engaged in the business of fire or marine insurance, must be in gold coin of the United States. En. March 12, 1872.

§ 628. Salary of commissioner. The annual salary of the insurance commissioner is three thousand dollars. En. March 12, 1872. Am'd. 1880, 88.

§ 629. Salary of deputy. The annual salary of the deputy of the insurance commissioner is eighteen hundred dollars. En. March 12, 1872. Am'd. 1880, 88; 1887, 12.

Deputy is an executive officer: Ante, sec. 343.

§ 630. Contingent expenses. The commissioner may procure rooms for his office at a rent not to exceed seventy-five dollars per month, and may provide a suitable safe and furniture therefor; he may also provide stationery, fuel, printing, and other conveniences necessary for the transaction of the business of his office. Out of the funds paid into the state treasury by the insurance commissioner, there shall be set aside and reserved each and every year the sum of two thousand dollars, as a special fund, to be called the insurance commissioner's special fund. All ex-

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penditures authorized in this section must be audited by the board of examiners, who must allow the same and direct payment thereof to be made; and the controller shall draw warrants therefor on the state treasury for the payment of the same to the insurance commissioner out of the said insurance commissioner's special fund. En. March 12, 1872. Am'd. 1887, 12.

§ 631. **Location of office.** The commissioner must keep his office in the city of San Francisco. En. March 12, 1872.

§ 632. **Official bond.** The commissioner must execute an official bond in the sum of ten thousand dollars. En. March 12, 1872.

Official bonds: Generally, see post, secs. 947-986.

§ 633. **Conditions precedent to license of agent.** No person shall, in this state, act as the agent or solicitor of any life insurance company doing business in this state until he has produced to the commissioner, and filed with him, a duplicate power of attorney from the company, or its authorized agent, authorizing him to act as such agent or solicitor. Upon filing such power, the commissioner shall issue a license to him to act as such agent or solicitor for such company, if such company has received a certificate of authority from such commissioner to do business in this state. Such license shall continue in force twelve months from the date thereof, but may be and shall be sooner revoked upon application of the company or its authorized agent. Such license may be renewed, from time to time, for an additional period of twelve months, on production, by the holder, to the commissioner, of a certificate from the company that such person's authority as such agent or solicitor continues. For each such license or renewal thereof, the commissioner shall receive the sum of one dollar. The commissioner shall keep an alphabetical list of the names of the persons to whom such licenses shall be issued, with the date of the license and renewal, and the name of the company for whom such person is working. If any person shall, under a false or fictitious name, procure, or attempt to procure, a license to act as agent or solicitor of any life insurance company, he shall be guilty of a misdemeanor. Every person who, in this state, procures, or agrees to procure, any insurance for a resident of this state from any insurance company not incorporated

under the laws of this state, unless such company or its agent has filed the bond required by the laws of this state relating to insurance, and obtained from the commissioner a certificate of authority to do business, and every person who solicits or procures any life insurance without having been duly licensed so to do by the commissioner, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly. The insurance commissioner must require, as a condition precedent to the transaction of life insurance business in this state, that every life insurance corporation or company created by the laws of any other state, or of any foreign country must file in his office the name of an agent, and his place of residence in this state, on whom summons and other process may be served in all actions or other legal proceedings against such corporation or company; all process so served gives jurisdiction over such corporation or company. The agent so appointed must be the principal agent of such corporation or company in this state. Any such foreign corporation or company shall, as a further condition precedent to the transaction of insurance business in this state, and in consideration of the privilege to transact such insurance business in this state, make and file with the insurance commissioner an agreement or stipulation, executed by the proper authorities of such corporation or company, in form and substance as follows: The (giving name of corporation or company) does hereby stipulate and agree that in consideration of the permission granted by the state of California to it to transact insurance business in this state, that if at any time such corporation or company shall, under the existing provisions of law in this state in relation to insurance companies, be without an agent in this state on whom summons or other legal process may be served, service of such summons or other legal process may be made upon the insurance commissioner, such service upon the commissioner to have the same force and effect as if made upon the corporation or company. Whenever such service of summons or other legal process shall be made upon the insurance commissioner, he must, within ten days thereafter, transmit by mail, by registered letter, a copy of such summons or other legal process to the corporation, addressed to the president or secretary thereof, at its home or principal office; such copy must be certified

by the commissioner, under his hand and official seal, and the sending of such copy by the said commissioner shall be a necessary part of the service of summons or other legal process. En. Stats. 1873-4, 66. Am'd. 1880, 90; 1893, 116.

Agent upon whom process may be served: See ante, sec. 616.

§ 634. Registry of policies, deposits for security of. It shall be lawful for any company or corporation transacting the business of life insurance in this state to register with the insurance commissioner such of its policies as may be agreed upon by the company and the insured; such registration to consist in a written or printed list of such policies, filed with the commissioner, showing the name and age of the insured, number and date of the policy, and the kind and amount of insurance in each case. Such list must be filed with the commissioner within thirty days after the issuance of the first registered policy, and must contain all such policies issued up to the date of filing. After that date, the company must, within three days after the first day of each calendar month, file a statement embracing all its registered policies issued since the filing of its last preceding list. Upon filing such lists of policies, from time to time, the company must deposit with the commissioner, as a special deposit for the benefit of such registered policies, securities of the denominations stated in section four hundred and twenty-seven of the Civil Code, as permissible for the investment of the capital and accumulations of life insurance companies. Such deposit must be in an amount equal to the full net value of all policies registered up to the time of making the deposit, and must at all times be equal to such net value of all the registered policies. Upon receipt of such securities, the commissioner must immediately deposit them in the state treasury, in accordance with the provisions of section six hundred and eighteen of the Political Code, where they must remain as a special security for the benefit of said registered policies. Such company may at any time withdraw any excess of securities above the net present value hereinbefore specified, upon satisfying said commissioner, by written proof, that such excess exists, and shall be allowed to receive the interest on all securities deposited, and to exchange such securities, by substituting other

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securities of the character in which, by the laws of this state, it may invest its funds. En. Stats. 1877-8, 20.

Cal.Rep.Cit. 128, 537.

ARTICLE XVII.

FISH COMMISSIONERS.

§ 642. General duties of.
§ 643. No compensation.

§ 642. General duties of. It is the duty of the fish commissioners:

1. To see that the laws for the preservation of fish and game are strictly enforced; and for that purpose they may from time to time employ such assistants as they shall deem necessary, which persons so appointed as assistants shall have all powers and authority of sheriffs to make arrests for violation of such laws throughout the state.

2. To establish fish breederies for stocking the waters of this state with foreign and native fish.

3. To purchase and import the spawn or ova of fish suitable for food.

4. To stock with such spawn the waters of this state.

5. To employ persons skilled in fish-breeding to assist them in their duties.

6. To furnish plans for and direct and compel the construction and repair of fish ladders and ways upon dams and obstructions.

7. To provide for the distribution and protection of game birds imported into this state for purposes of propagation.

8. To report biennially to the governor a statement of all their transactions and disbursements. En. March 12, 1872. Am'd. 1877-8, 21.

Fishways in streams frequented by migratory fish, act to provide for construction, etc.: Post, Appendix, title Fish and Game Warden and Commissioners.

Act creating office of fish and game warden: See post, Appendix, title Fish and Game Warden and Commissioners.

Act to authorize maintenance of salmon hatchery: See post, Appendix, title Fish and Game Warden and Commissioners.

Report of fish commissioners: Ante, secs. 332, 333.

Civil executive officers, three fish commissioners are: Ante, sec. 343.

Appointment and term of office: Ante, secs. 368, 369.

Act authorizing disposition of hatchery: See post, Appendix, title Fish and Game Warden and Commissioners.

Act authorizing commissioners to import game birds: See post, Appendix, title Fish and Game Warden and Commissioners.

§ 643. No compensation. The commissioners receive no compensation. En. March 12, 1872.

ARTICLE XVIII.

BOARD OF EXAMINERS.

§ 654. Chairman.
§ 655. Meetings.
§ 656. Records.
§ 657. Rules and regulations.
§ 658. Witnesses.
§ 659. Depositions.
§ 660. Claims for which appropriations have been made.
§ 661. Approval and drawing.
§ 662. If not approved.
§ 663. Claims provided for, but for which there is no appropriation.
§ 664. Same, as to unsettled claims.
§ 665. Time of meeting for action on claims referred to.
§ 666. Proof and examination of such claims.
§ 667. Report on such claims.
§ 668. Disqualifications.
§ 669. Treasurer to act in place of disqualified members.
§ 670. Restrictions on power of board.
§ 671. Appeals.
§ 672. Controller not to draw warrant for claims not audited.
§ 673. Certain claims exempted.
§ 674. Board may prevent payment of controller's warrants.
§ 675. Must examine books of controller and treasurer.
§ 676. Must count money in treasury.
§ 677. Must make affidavit thereof.
§ 678. Controller and treasurer must permit examination, etc.
§ 679. Printing expert.
§ 680. Conversion of school fund into bonds.
§ 681. Issuance and sale of bonds, duties of officers.
§ 682. Conversion of school funds into bonds.
§ 683. Purchase of state bonds.
§ 684. Assistant secretary to board.
§ 685. Clerks for secretary of board.

§ 654. Chairman. The governor, and in his absence the secretary of state, is chairman of the board of examiners. The governor shall appoint a secretary, to hold office during his pleasure, whose salary as secretary and ex-officio member of the board shall be three thousand dollars per annum, payable as the salaries of other state officers. He is an executive officer attached to the governor's office, and is

authorized to administer oaths, and shall perform such duties, other than secretary, as may be assigned to him by the governor, from time to time. En. March 12, 1872. Am'd. 1887, 57; 1891, 71; 1893, 182.

Cal.Rep.Cit. 47, 370.

Auditing functions of board.—Account of state geologist: Ante, sec. 553; officers of land department: Post, sec. 3410; of board of equalization: Post, sec. 3702.

Violating duty: Pen. Code, sec. 441.

Board of examiners, acts relating to: See post, Appendix, title Board of Examiners.

§ 655. Meetings. The semi-monthly meetings of the board must be held at the state capitol on the first and third Mondays in each month. En. March 12, 1872.

§ 656. Records. The board must keep a record of all their proceedings, and any member may cause his dissent to the action of the majority upon any matter to be entered upon such record. And all claims must be entered on the minutes of the board before the same shall be acted upon. En. March 12, 1872. Am'd. 1873-4, 67.

Cal.Rep.Cit. 72, 9.

§ 657. Rules and regulations. The board may, in writing, establish rules and regulations not inconsistent with law for its government. En. March 12, 1872.

§ 658. Witnesses. The chairman may issue subpœnas and compel the attendance of witnesses before the board or any member thereof in the same manner that any court in this state may; and whenever the testimony of any witness against a demand pending before them is material, the chairman must cause the attendance of the witness before the board, or a member thereof, to testify concerning the demand, and the board may make a reasonable allowance therefor, not exceeding the fees of witnesses in civil cases, which must be paid out of the appropriation for the contingent expenses of the board, but in no instance can an allowance be made in favor of a witness who appeared in behalf of the claimant. En. March 12, 1872.

Witnesses: See Code Civ. Proc., secs. 1878-1884. Production of: Id., secs. 1985-1997. Privileges and liabilities: Secs. 2064 et seq.

§ 659. Depositions. Each member of the board may take depositions, to be used before it. En. March 12, 1872.

Depositions: Code Civ. Proc., secs. 2019 et seq.

§ 660. Claims for which appropriations have been made. Any person having a claim against the state for which an appropriation has been made, may present the same to the board in the form of an account or petition, and the clerk of the board must date, number, and file such claim, and the board must allow or reject the same in the order of its presentation. The board may for cause postpone action upon a claim for not exceeding one month. En. March 12, 1872.

Cal.Rep.Cit. 46, 190; 55, 489; 80, 223; 80, 228; 106, 126.

§ 661. Approval and drawing. If the board approve such claim they must indorse thereon, over their signatures, "Approved for the sum of —— dollars," and transmit the same to the office of the controller of state; and the controller must draw his warrant for the amount so approved in favor of the claimant or his assigns in the order in which the same was approved. En. March 12, 1872.

Cal.Rep.Cit. 80, 223; 80, 228; 106, 126.

§ 662. If not approved. If the board disapprove such claim they must cause the same to be filed with the records of the board, with a statement showing such disapproval, and the reasons therefor. En. March 12, 1872.

§ 663. Claims provided for, but for which there is no appropriation. If no appropriation has been made for the payment of any claim presented to the board the settlement of which is provided for by law, or if an appropriation made has been exhausted, the board must audit the same, and if they approve it, must transmit it to the legislature with a statement of their approval. En. March 12, 1872.

Cal.Rep.Cit. 46, 190; 64, 92; 123, 111.

§ 664. Same, as to unsettled claims. Any person having a claim against the state, the settlement of which is not otherwise provided for by law, must present the same to the board of examiners at least four months before the meeting of the legislature, accompanied by a statement showing the facts constituting the claim, verified in the same manner as complaints in civil actions. En. March 12. 1872.

§ 665. Time of meeting for action on claims referred to. On the first Monday of September preceding the meeting of each legislature the board must hold a session at the state capitol for the purpose of examining the class of claims referred to in the preceding section, and may adjourn from time to time until their work is completed. Prior thereto they must cause a list and brief abstract of all claims filed with them to be made and published in some newspaper at Sacramento City for such time as they may prescribe. The list must be accompanied by a general notice of the order in which and of the time when the board will proceed to examine the claims. En. March 12, 1872.

§ 666. Proof and examination of such claims. The board must, at the time designated, proceed to examine and adjust all such claims. They may hear evidence in support of or against them, and report to the legislature such facts and recommendations concerning them as they may think proper. In making their recommendations they may state and use any official or personal knowledge which any member of the board may have touching such claims. En. March 12, 1872.

§ 667. Report on such claims. The board must make up their report and recommendation at least thirty days before the meeting of the legislature. A brief abstract of their report, showing the claims rejected, and those, or the amounts thereof, allowed, must be published in a newspaper published at Sacramento City for such time as the board may prescribe before the meeting of the legislature. En. March 12, 1872.

§ 668. Disqualifications. No member of the board must act upon any claim in which he is interested, or for expenditures incurred in his office, nor must he be present when the decision thereon is made. En. March 12, 1872.

§ 669. Treasurer to act in place of disqualified members. When any member of the board is disqualified from acting upon any claim, the state treasurer must act in his stead. En. March 12, 1872.

State treasurer: Ante, secs. 452-459.

§ 670. Restrictions on power of board. The board must not entertain, for the second time, a demand against the

state once rejected by it or by the legislature, unless such facts are presented to the board as in suits between individuals would furnish sufficient ground for granting a new trial. En. March 12, 1872.

New trial: See Code Civ. Proc., secs. 656-663½.

§ 671. **Appeals.** Any person interested, who is aggrieved by the disapproval of a claim by the board, may appeal from the decision to the legislature of the state, by filing with the board a notice thereof, and upon the receipt of such notice the board must transmit the demand and all the papers accompanying the same, with a statement of the evidence taken before it to the legislature. En. March 12, 1872.

§ 672. **Controller not to draw warrant for claims not audited.** The controller must not draw his warrant for any claim unless it has been approved by the board, and when, hereafter, the controller is directed to draw his warrant for any purpose, this direction must be construed as subject to the provisions of this section, unless the direction is accompanied by a special provision exempting it from its operation. En. March 12, 1872.

Cal.Rep.Cit. 80, 223; 102, 285; 106, 121; 106, 126; 106, 128.

Controller's authority to draw warrants: See ante, sec. 433, subd. 17. Preventing excess of: Post, sec. 674.

§ 673. **Certain claims exempted.** Claims upon the contingent fund of either house of the legislature, and for official salaries, are exempted from the operations of the provisions of the preceding twelve sections. En. March 12, 1872.

Cal.Rep.Cit. 106, 126.

§ 674. **Board may prevent payment of controller's warrants.** Whenever the board has reason to believe that the controller has drawn or is about to draw his warrant without authority of law, or for a larger amount than the state actually owes, the board must notify the treasurer of state not to pay the warrant so drawn or to be drawn; and thereupon the treasurer is prohibited from paying the warrant, whether already drawn or not, until he is otherwise directed by the legislature. En. March 12, 1872.

§ 675. **Must examine books of controller and treasurer.** As often as it may deem proper the board must examine

the books of the controller and treasurer, the accounts and vouchers in their offices, and count the money in the treasury; and for that purpose they may demand, and the controller and treasurer must furnish without delay, all information touching the books, papers, vouchers, or matters pertaining to their offices. En. March 12, 1872.

§ 676. **Must count money in treasury.** The counting of the moneys in the state treasury must take place at least once a month, without the board or any member thereof giving the treasurer any previous notice of the day or hour of counting. The board may, at any counting, place any sum in bags or boxes, and weigh each bag or box separately, and mark the same with the weight thereon plainly specified, and place thereon a seal, to be kept by them, and may at subsequent countings count or reweigh each bag or box separately, and estimate the contents of such bags or boxes as part of the money counted by them, without making a detailed count of its contents. En. March 12, 1872.

§ 677. **Must make affidavit thereof.** They must, at least once in each month, make and file in the office of the secretary of state, and publish in some newspaper in Sacramento City, an affidavit showing:

1. The amount of money that ought to be in the state treasury.
2. The amount and kind of money actually therein. En. March 12, 1872.

§ 678. **Controller and treasurer must permit examination, etc.** The controller and treasurer must permit the board of examiners to examine the books and papers in their respective offices; and the treasurer must permit the moneys in the treasury, without delay on any pretense whatever, to be counted whenever the board may wish to make an examination or counting. En. March 12, 1872.

§ 679. **Printing expert.** The board must appoint a printing expert, who must examine and report to the board all accounts for printing presented by the state printer or any other person, specifying whether the work has been executed in a workmanlike manner or not, and the amount for which the same should be allowed. The report is not

conclusive on the board, but is in aid of the discharge of their duties. The expert must receive a salary of fifty dollars a month, payable on the last day of each month. En. March 12, 1872.

State printer, now superintendent of state printing: Ante, secs. 526 et seq.

§ 680. Conversion of school fund into bonds. Whenever and as often as there is in the state treasury the sum of ten thousand dollars as the proceeds of the sale of state school lands, the board must invest the same in the civil funded bonds of this state, or in the bonds of the United States, or in the bonds of the several counties, city and county, cities or towns or school districts of this state; the investments to be made in such manner and on such terms as the board shall deem best for the fund; provided, that no bonds of any county, city and county, city or town or school districts, shall be purchased of which the debt, debts, or liabilities at the time exceed fifteen per cent of the assessed value of the taxable property of such county, city and county, city or town or school district. En. March 12, 1872. Am'd. 1883, 25; 1903, 42.

State school lands: Post, secs. 3494-3503.

State bonds, act providing for issuance of, preserved: Ante, sec. 19, subd. 3.

§ 681. Issuance and sale of bonds, duties of officers. Whenever the board of supervisors, trustees, common council, or other governing board or body of any county, city and county, city or town, or school district of this state shall vote bonds for any purpose, or shall refund any bonds already issued, and said bonds are ready to be sold, the clerk of such board, trustees, common council, or other governing board or body shall forthwith, by mail, postage prepaid, notify the state board of examiners and state treasurer, at the capitol, of such issuance and sale of bonds, and shall give the name by which the bonds are known, the amount of the issuance, the denomination of each bond, the rate of interest, and length of time bonds are to run. No certified check, bond, or other assurance in law shall be required from the state upon its application to purchase bonds. En. March 12, 1872. Rep. 1883, 26. En. Stats. 1903, 406.

§ 682. Conversion of school funds into bonds. All bonds purchased by the board under the provisions of section six hundred and eighty must be delivered to the state treasurer, who shall keep them as a special school fund deposit, the interest upon such bonds to be placed by him to the credit of the state school fund. En. March 12, 1872. Am'd. 1883, 26.

Cal.Rep.Cit. 106, 128.

School funds and taxes, general provisions relating to: Post, secs. 1857-1861.

§ 683. Purchase of state bonds. At any sale of civil bonds by the state treasurer the board may become bidders, and purchase bonds with the funds at their disposal, and the appropriate transfer of funds must be made by the controller and treasurer on the books of their offices. En. March 12, 1872.

1905 7 **§ 684. Assistant secretary to board.** The governor may appoint an assistant to the secretary of the state board of examiners, at an annual salary of eighteen hundred dollars, payable in the same manner as the salaries of other state officers. Said assistant is a civil executive officer. En. March 12, 1872. Rep. 1880, 2. En. Stats. 1891, 194.

Cal.Rep.Cit. 51, 550.

1905 7 **§ 685. Clerks for secretary of board.** The board may appoint four clerks for the secretary of said board, as follows: Two clerks at an annual salary of sixteen hundred dollars each, and two clerks at an annual salary of twelve hundred dollars each, such salaries to be payable in the same manner as the salaries of other state officers. En. March 12, 1872. Rep. 1880, 88. En. Stats. 1893, 182. Am'd. 1901, 807.

Cal.Rep.Cit. 47, 870.

ARTICLE XIX.

POWERS AND DUTIES OF OTHER EXECUTIVE OFFICERS.

§ 695. Vaccine agent.
§ 696. Commissioner of immigration.
§ 697. State capitol commissioners.
§ 698. Tide land commissioners. (Repealed.)
§ 699. Port wardens.
§ 700. Harbor commissioners.
§ 701. Pilots.
§ 702. San Francisco marine board. (Repealed.)

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§ 703. Pilot commissioners.
§ 704. Boards of health.
§ 705. Board of agriculture.
§ 706. Board of equalization.
§ 707. Regents of university.
§ 708. State board of education.
§ 709. Trustees of normal school.
§ 710. Officers of libraries.
§ 711. Directors of state prison.
§ 712. Officers of insane asylum.
§ 713. Trustees of asylum for deaf, dumb, and blind.
§ 714. Trustees of state burying-grounds.
§ 715. Yosemite and big tree commissioners.

§ 695. Vaccine agent. The powers and duties of the vaccine agent are prescribed in title VII, of part III, of this code. En. March 12, 1872.

Vaccine agent: Post, secs. 2993, 2994.

§ 696. Commissioner of immigration. Those of the commissioner of immigration are prescribed in title VII, part III, of this code. En. March 12, 1872.

Commissioner of immigration: Post, secs. 2949-2969.

§ 697. State capitol commissioners. Those of the state capitol commissioners are prescribed by "An act to provide for the construction of the state capitol in the city of Sacramento," approved March twenty-ninth, eighteen hundred and sixty, and the acts amendatory thereof, which are hereby continued in force. En. March 12, 1872.

State capitol commissioners are executive officers: Ante, sec. 343. Board, how composed: Ante, sec. 366.

Secretary of state is superintendent of state capitol: Ante, sec. 412.

§ 698. Tide land commissioners. (Repealed.) En. March 12, 1872. Rep. 1875-6, 15.

§ 699. Port wardens. Those of port wardens are prescribed in title VI, of part III, of this code. En. March 12, 1872.

Port wardens: See post, secs. 2501-2511.

§ 700. Harbor commissioners. Those of harbor commissioners are prescribed in title VI, of part III, of this code. En. March 12, 1872.

Harbor commissioners: See post, secs. 2520-2572.

§ 701. Pilots. Those of pilots are prescribed in title VI, of part III, of this code. En. March 12, 1872.

Pilots: See post, secs. 2429-2491.

§ 702. San Francisco marine board. (Repealed.) En. March 12, 1872. Rep. 1875-6, 14.

§ 703. Pilot commissioners. Those of pilot commissioners are prescribed in title VI, of part III, of this code. En. March 12, 1872.

Pilot commissioners: See post, secs. 2429-2491.

§ 704. Boards of health. Those of the boards of health are prescribed in title VII, of part III, of this code. En. March 12, 1872.

Boards of health: See post, secs. 2978-3084.

§ 705. Board of agriculture. Those of the board of agriculture are prescribed in the special statute creating the board. En. March 12, 1872.

Board of agriculture: See post, sec. 2326.

§ 706. Board of equalization. Those of the board of equalization are prescribed in title IX, of part III, of this code. En. March 12, 1872.

Board of equalization: See post, secs. 3672-3705.

§ 707. Regents of university. Those of the regents of the University of California, in chapter I, of title III, of part III. En. March 12, 1872.

Regents of university: See post, secs. 1425-1451.

§ 708. State board of education. Those of the state board of education are prescribed in chapter III, of title III, of part III, of this code. En. March 12, 1872.

State board of education: See post, secs. 1517-1522.

§ 709. Trustees of normal school. Those of the trustees of the state normal school are prescribed in chapter II, of title III, of part III, of this code. En. March 12, 1872.

State normal school: Post, secs. 1487-1507. See post, Appendix, title Normal Schools.

§ 710. Officers of libraries. Those of the trustees of the state library, state librarian, and librarian of the supreme court library, are prescribed in chapter III, of title V, of part III, of this code. En. March 12, 1872.

Library trustees and librarians: See post, secs. 2292-2316.

§ 711. Directors of state prison. Those of the directors of the state prison are prescribed in part III of the Penal Code. En. March 12, 1872.

State prison directors: Pen. Code, secs. 1573-1595; but see act of 1889, p. 404, superseding act in Stats. 1880, p. 67, pursuant to Const. Cal., art. X, and amended by Stats. 1881, p. 79.

§ 712. Officers of insane asylum. Those of the directors and other officers of the insane asylum are prescribed in chapter I, of title V, of part III, of this code. En. March 12, 1872.

Officers of insane asylum: See post, secs. 2136-2200.

Acts relating to state prison: See Pen. Code, Appendix, title State Prisons.

§ 713. Trustees of asylum for deaf, dumb, and blind. Those of the trustees of the asylum for the deaf, dumb, and blind, are prescribed in chapter II, of title V, of part III, of this code. En. March 12, 1872.

Trustees of asylum for deaf, dumb, and blind: See post, secs. 2237-2282.

§ 714. Trustees of state burying-grounds. Those of the trustees of the state burying-grounds are prescribed in title VIII, of part III, of this code. En. March 12, 1872.

Trustees of state burying-grounds: See post, sec. 3597.

§ 715. Yosemite and big tree commissioners. Those of the commissioners of the Yosemite Valley and the Mariposa big tree grove are prescribed in title VIII, of part III, of this code. En. March 12, 1872.

Yosemite and big tree commissioners: See post, secs. 3584-3586.

CHAPTER IV.

JUDICIAL OFFICERS.

§ 726. Number, designation, and mode of election.

§ 726. Number, designation, and mode of election. The number, designation, and mode of election of judicial officers are fixed in title I, part I, of the Code of Civil Procedure. En. March 12, 1872.

Designation of judicial officers: See Code Civ. Proc., sec. 33.

Judicial officers, election, etc.: See Code Civ. Proc., secs. 40-42, 65-70, 110, 156-159.

Judicial department: Const. Cal., art. VI. Functions independent: See Const. Cal., art. III.

Jurisdiction of courts: See Code Civ. Proc., secs. 33 et seq.

CHAPTER V.

SALARIES OF JUSTICES OF THE SUPREME COURT AND SUPERIOR JUDGES, AND OFFICERS CONNECTED WITH THE SUPREME COURT.

§ 736. Salary of justices of supreme court.
§ 737. Salary of superior judges.
§ 738. Same.
§ 739. Salaries of officers connected with the supreme court.

1905 224 **§ 736. Salary of justices of supreme court.** The annual salary of each justice of the supreme court is six thousand dollars. En. March 12, 1872.

1905 **§ 737. Salary of superior judges.** The annual salaries of the judges of the superior courts of the city and county of San Francisco are four thousand dollars, and the counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Santa Cruz, San Mateo, Yuba and Sutter combined, Sacramento, Butte, Nevada, Sonoma, Colusa, Monterey, San Luis Obispo, Shasta, Siskiyou, Santa Barbara, San Diego, Marin, Mendocino, Tehama, San Bernardino, Kern, Placer, Humboldt, Tulare, Fresno, Solano, Yolo, and Contra Costa are four thousand dollars each, and of the judges of the superior courts of Amador, Calaveras, Stanislaus, El Dorado, and Tuolumne three thousand five hundred dollars per annum; the judge of the superior court of Alpine, two thousand dollars per annum: one half of which shall be

paid by the state and the other half thereof by the county of which the judge is elected or appointed, except that in the counties of Yuba and Sutter, one fourth of the salary of the superior judge shall be paid by each county. Until the first Monday after the first day of January, nineteen hundred and three, unless a vacancy occurs in the office of judge of the superior court of said counties combined; provided, that from and after the first Monday after the first day of January, nineteen hundred and three, or after the happening of a vacancy, should the same occur, in such office of said counties combined, the judge of the superior court, respectively, of the counties of Yuba and Sutter shall receive a salary of four thousand dollars per annum, payable in each case one half by the state and the other half by the county for which the judge is elected or appointed, at the times and in the manner now provided by law for the payment of such salaries in other counties. En. March 12, 1872. Am'd. 1873-4, 12; 1880, 88; 1889, 33; 1891, 267; 1899, 132; 1901, 71.

Constitution, art. VI, sec. 24, provides that no judge shall draw salary until he has made affidavit that no cause remains undecided for ninety days.

§ 738. Same. The annual salaries of the judges of the other superior courts are three thousand dollars each, one-half thereof payable by the state, and the other half thereof payable by the county for which the judge is elected. En. March 12, 1872. Am'd. 1880, 88.

§ 739. Salaries of officers connected with the supreme court. The annual salaries of the officers connected with the supreme court are as follows: The reporter of the decisions, twenty-five hundred dollars; one phonographic reporter, three thousand dollars, and one phonographic reporter, twenty-four hundred dollars; two secretaries of the court, each, twenty-four hundred dollars; each bailiff, fifteen hundred dollars; the librarian, fifteen hundred dollars. En. March 12, 1872. Am'd. 1880, 88; 1887, 221; 1897, 208; 1901, 115.

Cal.Rep.Cit. 57, 652.

Phonographic reporter: Post, secs. 769, 770.

Secretary and bailiff, appointment: See Code Civ. Proc., secs. 265, 266.

CHAPTER VI.

MINISTERIAL AND OTHER OFFICERS CONNECTED WITH THE COURTS.

Article I. Clerk of the Supreme Court, §§ 749-757.
II. Reporters of the Supreme Court, §§ 767-782.
III. Notaries Public, §§ 791-801.
IV. Commissioners of Deeds, §§ 811-817.
V. Other Officers, §§ 827-881.

ARTICLE I.

CLERK OF THE SUPREME COURT.

§ 749. Election and term of office.
§ 750. General duties.
§ 751. May appoint deputies.
§ 751½. Stenographer, appointment and salary of.
§ 752. Fees.
§ 753. Disposition of fees.
§ 754. Settlements, when and how made.
§ 755. Salary of clerk.
§ 756. Salary of deputies.
§ 757. Official bond.

§ 749. Election and term of office. The clerk of the supreme court is elected at the same time the governor is elected, and holds his office for the term of four years from and after the first Monday in December next succeeding his election. En. March 12, 1872.

Clerk of supreme court, legislature to provide for election, etc.: See Const. Cal., art. VI, sec. 14.

Vacancy in office, how filled: Post, sec. 1001.

§ 750. General duties. The clerk of the supreme court must perform such duties as are prescribed in the Penal Code and Code of Civil Procedure, and such duties as may be required of him by the rules and practice of the court. En. March 12, 1872.

Duties, to be fixed by legislature: Const. Cal., art. VI, sec. 14.

§ 751. May appoint deputies. There shall be appointed by the clerk of the supreme court five deputy clerks of the supreme court; and there shall likewise be appointed, in addition thereto, a chief deputy clerk of said supreme court, who shall act as clerk of the supreme court in the absence of said clerk. The chief deputy clerk and deputy clerks of the supreme court shall be civil executive officers.

En. March 12, 1872. Am'd. 1875-6, 23; 1877-8, 22; 1880, 5; 1881, 48; 1891, 508; 1899, 142.

Salaries of deputies: Post, sec. 756.

§ 751½. **Stenographer, appointment and salary of.** The clerk of the supreme court is hereby authorized to employ a stenographer, whose salary shall be one thousand ($1,000.00) dollars annually and be payable at the same time and in the same manner as other state officers are paid. En. Stats. 1903, 186.

§ 752. **Fees.** He must collect in advance the following fees: For filing the transcript on appeal, in each civil case appealed to the supreme court, ten dollars, in full of all services rendered in each case up to the rendering of the judgment or the issuing of the remittitur, when no petition for a rehearing has been filed; for filing a petition for a rehearing, and for all services to the issuing of remittitur to the court below, two dollars and fifty cents; for filing motion to dismiss appeal on clerk's certificate, two dollars and fifty cents; for filing petitions for writs of mandate, review, prohibition, and other original proceeding, seven dollars and fifty cents, in full for all services rendered in each case; for filing order extending time to file transcript, fifty cents; for certificate of admission as attorney and counselor, ten dollars; for filing each paper in writs of error to the supreme court of the United States, twenty-five cents; for making record in writs of error to the supreme court of the United States, and for copies of any record or document in his office, per folio, ten cents; but this fee shall not be taxed against parties to suit for any paper or copy of paper up to and including remittitur; for comparing any document requiring any document requiring a certificate, per folio, five cents; for each certificate under seal, one dollar. En. March 12, 1872. Am'd. 1877-8, 23; 1895, 29.

§ 753. **Disposition of fees.** All fees collected by him must be paid into the state treasury, eighty per cent thereof to the credit of the general fund, and twenty per cent thereof to the credit of the supreme court library fund. En. March 12, 1872. Am'd. 1877-8, 23.

§ 754. **Settlements, when and how made.** He is responsible and must account for, and in his settlement with

the controller must be charged, with the full amount of all fees collected or chargeable, and accruing in causes brought into the court, for services rendered therein up to the time of each settlement, and must, at the end of every month, pay the same into the state treasury. He must also, at the end of every month, render to the controller of state, in such form as that officer prescribes, an account in detail, under his own oath, of all fees chargeable and accruing in causes brought into court and not included in his previous accounts rendered. His salary must not be allowed or paid until all fees so accruing, and for which he is chargeable, have been accounted for and paid over. En. March 12, 1872. Am'd. 1877-8, 23.

§ 755. **Salary of clerk.** The annual salary of the clerk of the supreme court is three thousand dollars. En. March 12, 1872. Am'd. 1880, 88.

Cal.Rep.Cit. 67, 627.

Salary of clerk, withheld until fees settled for: Ante, sec. 754.

§ 756. **Salary of deputies.** The annual salary of the chief deputy clerk of the supreme court shall be twenty-four hundred dollars; the annual salary of each of the deputy clerks of the supreme court shall be eighteen hundred dollars. The salaries of the chief deputy clerk and the deputy clerks of the supreme court shall be paid out of the state treasury in the same manner and at the same time as the salaries of other state officers are paid. En. March 12, 1872. Am'd. 1875-6, 23; 1877-8, 24; 1899, 142.

§ 757. **Official bond.** The clerk of the supreme court must execute an official bond in the sum of ten thousand dollars. En. March 12, 1872.

Official bond: See post, secs. 947-987.

[illegible] Sec 758-1765-170

ARTICLE II.

REPORTERS OF THE SUPREME COURT.

§ 767. Reporter of decisions, appointment and term.
§ 768. Affidavit to be made by appointee. (Repealed.)
§ 769. Phonographic reporters, appointment and terms of office.
§ 770. Duties of phonographic reporter.
§ 771. General duties of reporter of decisions.
§ 772. Same.
§ 773. Reports, made in what manner and form.
§ 774. Justices must supervise publication.
§ 775. Proof sheets.
§ 776. Original papers.
§ 777. Style of reports.
§ 778. Publication by contract.
§ 779. Advertisement and award.
§ 780. Contract, what to require.
§ 781. Purchase of volumes for use of state.
§ 782. Publication by state printer.

§ 767. Reporter of decisions, appointment and term. The reporter of decisions of the supreme court shall be appointed by the governor, to hold office for four years from and after his appointment. The governor shall appoint a reporter of the decisions of the supreme court to take effect on the first Monday in May, A. D. eighteen hundred and seventy-seven, and the term of office of the present incumbent shall cease on that day. En. March 12, 1872. Am'd. Stats. 1877-8, 389. 1905 220

Superseded by section 21, article VI, of the constitution.

Appointment by reporter.—Deputy may be appointed by reporter: Stats. 1881, p. 9.

Salary of reporter: Ante, sec. 739.

Publication of opinons of supreme court, fundamental provision for: Const. Cal., art. VI, sec. 16.

Decisions of supreme court, requisites and scope: See Code Civ. Proc., secs. 49, 53. To be in writing: Const. Cal., art. VI, sec. 2.

§ 768. Affidavit to be made by appointee. (Repealed.) En. March 12, 1872. Am'd. Stats. 1877-8, 389.

§ 769. Phonographic reporters, appointment and terms of office. The supreme court may also, in like manner, appoint two phonographic reporters for the court, to hold office at its pleasure. En. March 12, 1872. Am'd. 1897, 209.

§ 770. Duties of phonographic reporter. It is the duty of the phonographic reporter to attend upon the court during its sessions, and to:

1. Note the points made by counsel in oral arguments;
2. To take down all opinions of the court delivered orally;
3. Write out his notes in longhand upon the order of the court, and deliver such writing to the reporter of the decisions of the court;
4. Perform such other duties as may be imposed upon him by the court or a justice thereof. En. March 12, 1872.

§ 771. General duties of reporter of decisions. The reporter of the decisions of the supreme court must prepare a report of such cases decided as he may by the court be directed to report. En. March 12, 1872.

§ 772. Same. He must, from the notes delivered to him by the phonographic reporter, prepare a report of each of the cases included therein, and after preparing such report, must submit it to the court for correction and approval. En. March 12, 1872.

§ 773. Reports, made in what manner and form. Each report must be made in manner and form as the court may direct. En. March 12, 1872.

§ 774. Justices must supervise publication. The reports must be published under the supervision of the court, and to that end each of the justices must be furnished by the reporter with proof sheets of each volume thirty days before its final publication. En. March 12, 1872.

§ 775. Proof sheets. Within thirty days after such proof sheets are furnished, the justices may return them to the reporter, with corrections or alterations, and he must make the corrections or alterations accordingly. En. March 12, 1872.

§ 776. Original papers. The reporter may take the original opinions and papers in each case from the clerk's office and retain them in his possession not exceeding sixty days. En. March 12, 1872.

§ 777. Style of reports. The reports must be published in well-bound volumes, and must be printed on good book paper, in small pica leaded, and brevier, equal in quality of paper and binding to volumes thirty-three to thirty-nine, inclusive, of California Reports. En. March 12, 1872. **Am'd.** 1873-4, 12; 1873-4, 68.

§ 778. Publication by contract. The reporter shall have no pecuniary interest in the volumes of reports, but they must be published under the supervision of the court and reporter, by contract, to be entered into by the reporter, secretary of state, and attorney-general, with the person or persons who shall agree to publish and sell the said reports, for a period of ten years, on the terms most advantageous to the state and public, and at a rate not to exceed four dollars per volume of seven hundred pages. En. March 12, 1872. Am'd. 1873-4, 68.

§ 779. Advertisement and award. Before entering into said contract, it shall be the duty of the secretary of state to advertise for proposals for the publication of said reports for thirty days, in one daily paper in Sacramento, and one daily paper in San Francisco. It shall be the duty of said reporter, secretary of state, and attorney-general, to consider all proposals for the publication of said reports which may be made to them, and to award the contract to the person or persons who may agree to publish and sell the same on the terms most advantageous to the state and public. En. March 12, 1872. Rep. 1873-4, 69. En. 1873-4, 69.

§ 780. Contract, what to require. The contract must require the publisher to print and publish each volume in the style required by section seven hundred and seventy-seven, within sixty days from the time at which the manuscript is delivered by the reporter, to sell three hundred copies to the state at the price fixed in the contract, and to keep on hand and for sale, at the price stipulated in the contract, a sufficient number of copies of each volume to supply all demands for six years from the publication thereof, and to give bonds for the fulfillment of the terms of the contract in the sum of ten thousand dollars. En. March 12, 1872. Rep. 1873-4, 69. En. Stats. 1873-4, 69.

§ 781. Purchase of volumes for use of state. On the publication of each volume of reports, the secretary of state must purchase, for the use of the state, three hundred copies of said volume, at the price named in the contract, not exceeding four dollars per volume, and after having distributed the same, as required by section four hundred and ten, shall deposit the surplus copies, if any there be,

in the state library. En. March 12, 1872. Am'd. 1873-4, 13; 1873-4, 70.

§ 782. **Publication by state printer.** If, after advertising as required by section seven hundred and seventy-nine, no proposals are received by the secretary of state, agreeing to print, publish, and sell said volumes at a price not exceeding four dollars per volume, then the state printer must print and bind twelve hundred copies of each volume, and deliver to the secretary of state all the copies printed by him; and the secretary of state must keep the copies of the edition not distributed under the provisions of section four hundred and ten on sale at four dollars per volume, at retail, and at such wholesale price as may be fixed by the governor, controller and secretary of state, and must, at the end of each month, pay into the state treasury the proceeds of all sales made by him. This act shall not apply to any volume of reports, the printing of which may have been commenced by the state printer at the time the contract herein provided for is made. En. Stats. 1873-4, 70.

ARTICLE III.

NOTARIES PUBLIC.

§ 791. Number of notaries.
§ 792. Qualifications and residence.
§ 793. Terms of office.
§ 794. General duties of.
§ 795. Protests, evidence of facts stated.
§ 796. Records of, on death or resignation.
§ 797. Certified copies of records of a predecessor.
§ 798. Fees.
§ 799. Official bond.
§ 800. Notaries public, time to qualify.
§ 801. Liabilities on official bond.

1905 1911 § 791. **Number of notaries.** The governor may appoint and commission such number of notaries public for the several counties and cities and counties of this state as he shall deem necessary for the public convenience, except that in cities and counties and counties of the first class the number shall not exceed seventy. En. March 12, 1872. Am'd. 1873-4, 13; 1877-8, 24; 1880, 59; 1887, 79; 1889, 377; 1893, 289; 1901, 793; 1903, 244.

Additional notary public for San Francisco, at Presidio: See post, Appendix, title Notaries.

§ 792. Qualifications and residence. Every person appointed as notary public must, at the time of appointment, be a citizen of the United States and of this state, and twenty-one years of age; must have resided in the county for which the appointment is made for six months. Women having these qualifications may be appointed. En. March 12, 1872. Am'd. 1891, 29.

Elector: Post, sec. 1083.
Residence: Ante, sec. 52.

§ 793. Terms of office. The term of office of a notary public is four [4] years from and after the date of his commission. En. March 12, 1872. Rep. 1889, 378. En. Stats. 1899, 11.

Vacancies, and the modes of supplying them: Post, secs. 996-1004.

Power of successor: Post, secs. 796, 797.

§ 794. General duties of. It is the duty of notaries public:

1. When requested, to demand acceptance and payment of foreign, domestic, and inland bills of exchange, or promissory notes, and protest the same for non-acceptance and non-payment, and to exercise such other powers and duties as by the law of nations and according to commercial usages, or by the laws of any other state, government, or country, may be performed by notaries;

2. To take the acknowledgment or proof of powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing executed by any person, and to give a certificate of such proof or acknowledgment, indorsed on or attached to the instrument;

3. To take depositions and affidavits, and administer oaths and affirmations, in all matters incident to the duties of the office, or to be used before any court, judge, officer, or board in this state;

4. To keep a record of all official acts done by them;

5. To keep a record of the parties to, date, and character of every instrument acknowledged or proved before them;

6. When requested, and upon payment of their fees therefor, to make and give a certified copy of any record in their office;

7. To provide and keep official seals, upon which must be engraved the arms of this state, the words "notary

public," and the name of the county for which they are commissioned;

8. To authenticate with their official seals all official acts. En. March 12, 1872.

Cal.Rep.Cit. 89, 118.

Subd. 1. Demand for acceptance or payment, protest as evidence of: Post, sec. 795. Presentment for acceptance: Civ. Code, secs. 3185-3189. Presentment for payment: Secs. 3211-3214, 3248. Excuse of presentment and notice: Secs. 3218-3220.

Protest, of foreign bills: Civ. Code, secs. 3225-3238. Waiver of: Civ. Code, sec. 3160. As evidence: Post, sec. 795.

Notice of protest, how given: Civ. Code, sec. 3231; see notice of dishonor: Civ. Code, secs. 3141-3151. Fee for: Post, sec. 798.

Subd. 2. Acknowledgments, of instruments, generally: Civ. Code, secs. 1180-1207. Notary's authority to take: Civ. Code, secs. 1181-1183.

Subd. 3. Depositions: See Code Civ. Proc., secs. 2019-2021. Manner of taking in this state: See Code Civ. Proc., secs. 2031-2038.

Affidavits: See Code Civ. Proc., secs. 2009-2015.

Oaths and affirmations, administration of, generally: Code Civ. Proc., secs. 2093-2097. By notary, authorized: Code Civ. Proc., sec. 2093.

§ 795. Protests, evidence of facts stated. The protest of a notary, under his hand and official seal, of a bill of exchange, or promissory note, for non-acceptance or non-payment, stating the presentment for acceptance or payment, and the non-acceptance or non-payment thereof, the service of notice on any or all of the parties to such bill of exchange or promissory note, and specifying the mode of giving such notice, and the reputed place of residence of the party to such bill of exchange or promissory note, and of the party to whom the same was given, and the postoffice nearest thereto, is prima facie evidence of the facts contained therein. En. March 12, 1872. Am'd. 1873-4, 13.

Cal.Rep.Cit. 57, 329; 57, 330; 62, 261; 63, 368; 64, 460.

Official seal: Ante, sec. 794, subds. 7, 8.

Prima facie evidence, entry by officer is: See Code Civ.

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Proc., secs. 1920, 1926. Generally: See Code Civ. Proc., sec. 1833.

§ 796. **Records of, on death or resignation.** If any notary die, resign, is disqualified, removed from office, or removes from the county for which he is appointed, his records and all his public papers must, within thirty days, be delivered to the clerk of the county, who must deliver them to the notary's successor, when qualified. En. March 12, 1872.

Resignations, vacancies, and the mode of supplying them: Post, secs. 995-1004.

§ 797. **Certified copies of records of a predecessor.** Every notary having in his possession the records and papers of his predecessor in office may grant certificates or give certified copies of such records and papers, in like manner and with the same effect as such predecessor could have done. En. March 12, 1872.

Certificates and certified copies, of records and papers: See ante, secs. 794, 795.

§ 798. **Fees.** The fees of notaries are as follows:

For drawing and copying every protest for the non-payment of a promissory note, or for the non-payment or non-acceptance of a bill of exchange, draft, or check, two dollars.

For drawing and serving every notice of non-payment of a promissory note, or of the non-payment or non-acceptance of a bill of exchange, order, draft, or check, one dollar.

For recording every protest, one dollar.

For drawing an affidavit, deposition, or other paper for which provision is not herein made, for each folio, thirty cents.

For taking an acknowledgment or proof of a deed or other instrument, to include the seal and the writing of the certificate, for the first two signatures, one dollar each, and for each additional signature, fifty cents.

For administering an oath or affirmation, fifty cents.

For every certificate, to include writing the same, and the seal, one dollar. En. March 12, 1872. Am'd. 1873-4, 71.

§ 799. **Official bond.** Each notary must execute an official bond in the sum of five thousand dollars, which

bond must be approved by the judge of the superior court of his county, and filed and recorded as other official bonds of county officers. En. March 12, 1872. Am'd. 1880, 19.

Notary's official bond, liability on: Post, sec. 801. Bonds of officers, generally: Post, secs. 947-986.

§ 800. Notaries public, time to qualify. Each notary must file his official bond, and take, subscribe, and file his oath of office in the office of the county clerk within twenty days from the date of his commission, and must transmit a certificate of the facts, under the hand and seal of the county clerk, together with a copy of his official oath, signed by him with his own proper signature, to the office of the secretary of state, to be filed therein within thirty days from the date of his commission. En. March 12, 1872. Am'd. 1877-8, 24; 1903, 191.

Official oath, generally: Post, secs. 904-910.

§ 801. Liabilities on official bond. For the official misconduct or neglect of a notary public, he and the sureties on his official bond are liable to the parties injured thereby for all the damages sustained. En. March 12, 1872.

Cal.Rep.Cit. 68, 459; 75, 184; 89, 118; 131, 506.

ARTICLE IV.

COMMISSIONER OF DEEDS.

§ 811. Governor to appoint.
§ 812. General powers of.
§ 813. Effect of acts done by commissioners.
§ 814. Oath, when to be filed.
§ 815. Fees.
§ 816. List of commissioners to be published.
§ 817. Copy of this article to be transmitted to appointee.

§ 811. Governor to appoint. The governor may appoint in each state of the United States, or in any foreign state, one or more commissioners of deeds, to hold office for the term of four years from and after the date of their commission. En. March 12, 1872.

Cal.Rep.Cit. 81, 125.

§ 812. General powers of. Every commissioner of deeds has power, within the state for which he is appointed:

1. To administer and certify oaths;
2. To take and certify depositions and affidavits;
3. To take and certify the acknowledgment or proof of

powers of attorney, mortgages, transfers, grants, deeds, or other instruments for record;

4. To provide and keep an official seal, upon which must be engraved the arms of this state, the words "Commissioner of deeds for the state of California," and the name of the state for which he is commissioned;

5. To authenticate with his official seal all his official acts. En. March 12, 1872.

Acknowledgments, out of state: See Civ. Code, sec. 1182.

§ 813. **Effect of acts done by commissioners.** All oaths administered, depositions and affidavits taken, and all acknowledgments and proofs certified by commissioners of deeds, have the same force and effect, to all intents and purposes, as if done and certified in this state by any officer authorized by law to perform such acts. En. March 12, 1872.

§ 814. **Oath, when to be filed.** The official oaths of commissioners of deeds must be filed in the office of the secretary of state within six months after they are taken. En. March 12, 1872.

§ 815. **Fees.** The fees of commissioners of deeds are the same as those prescribed for notaries public. En. March 12, 1872.

§ 816. **List of commissioners to be published.** The names of all persons appointed commissioners must be published three times in some weekly newspaper, published at the seat of government of the state. En. March 12, 1872.

§ 817. **Copy of this article to be transmitted to appointee.** The secretary of state must transmit, with the commission to the appointee, a certified copy of this article, and of section 798. En. March 12, 1872.

ARTICLE V.

OTHER OFFICERS.

§ 827. Court commissioners.
§ 828. Secretary and bailiff of the supreme court.
§ 829. Phonographic reporters.
§ 830. Clerks, sheriffs, coroners, and other county officers, etc.
§ 831. Attorneys and counselors at law.

§ 827. **Court commissioners.** The mode of appointment, powers, and duties of court commissioners are fixed by

chapter II, title III, part I, of the Code of Civil Procedure. En. March 12, 1872.

Court commissioners: Code Civ. Proc., secs. 258, 259.

§ 828. Secretary and bailiff of the supreme court. The mode of appointment, powers, and duties of the secretary and bailiff of the supreme court are fixed by chapter II, title IV, part I, of the Code of Civil Procedure. En. March 12, 1872.

Secretaries and bailiffs of supreme court: Code Civ. Proc., secs. 265, 266. Salaries: Ante, sec. 739, of this code.

§ 829. Phonographic reporters. The mode of appointment, powers, and duties of phonographic reporters are fixed by chapter III, title IV, part I, of the Code of Civil Procedure, and sections 769 and 770 of this code. En. March 12, 1872.

Phonographic reporters: Code Civ. Proc., secs. 268-274. Of supreme court, salary: Ante, sec. 739, of this code.

§ 830. Clerks, sheriffs, coroners, and other county officers, etc. The mode of election of clerks, sheriffs, coroners, and other county and township officers, is fixed by part IV, of this code. En. March 12, 1872.

County officers, election of: Post, sec. 4109.

§ 831. Attorneys and counselors at law. The admission of attorneys and counselors at law is provided for and their duties fixed in chapter I, title V, part I, of the Code of Civil Procedure. En. March 12, 1872.

Attorneys and counselors at law: Code Civ. Proc., secs. 275-299.

CHAPTER VII.

GENERAL PROVISIONS RELATING TO DIFFERENT CLASSES OF OFFICERS.

Article I. Disqualifications, §§ 841-843.
II. Restrictions upon the Residence of Officers, §§ 852-855.
III. Powers of Deputies, § 865.
IV. Appointment and Duration of Term, §§ 875-879.
V. Nominations and Commissions, §§ 889-894.
VI. Oath of Office, §§ 904-910.
VII. Prohibitions Applicable to Certain Officers, §§ 920-926.
VIII. Salaries, when Title is Contested, §§ 936, 937.
IX. Bonds of Officers, §§ 947-987.
X. Resignations, Vacancies, and the Mode of Supplying them, §§ 995-1004.
XI. Proceedings to Compel Delivery of Books and Papers, §§ 1014-1016.
XII. Miscellaneous Provisions, §§ 1026-1032.

ARTICLE I.

DISQUALIFICATIONS.

§ 841. Age and citizenship.
§ 842. Other disqualifications.
§ 843. County officer not to act as deputy.

§ 841. Age and citizenship. No person is capable of holding a civil office who at the time of his election or appointment is not of the age of twenty-one years and a citizen of this state. En. March 12, 1872.

Cal.Rep.Cit. 51, 297; 136, 653.

Civil office, as distinguished from military: See as to executive officers, ante, sec. 341.

Over twenty-one: See Civ. Code, sec. 25, subd. 1. Women eligible to educational offices: Stats. 1874, p. 356; see post, Appendix, title Officers.

Citizens, who are: Ante, sec. 52.

Citizenship, as requisite for judicial officers: Code Civ. Proc., secs. 156, 157, 159.

§ 842. Other disqualifications. Provisions respecting disqualification for particular offices are contained in the constitution and in the provisions of the codes concerning the various offices. En. March 12, 1872.

Disqualification for holding office, by Const. Cal.: Bribery as, art. XX, secs. 10, 11; dueling as, art. XX, sec. 2; embezzlement or defalcation as, art. IV, sec. 21; federal officers, of, art. IV, sec. 20; forgery as, art. XX, sec. 11; governor, of, art. V, sec. 3; while holding other office, art. V, sec. 12; high crimes as, art. XX, sec. 11; impeachment, judgment in as, art. IV, sec. 18; judicial officers, of, for post of nonjudicial character, art. VI, sec. 18; legislature, members of, art. IV, sec. 4; what civil office of profit ineligible to, art. IV, sec. 19; if influenced by reward or promise thereof, art. IV, sec. 35; lieutenant-governor, from holding other office, art. V, sec. 15; malfeasance in office as, art. XX, sec. 11; perjury as, art. XX, sec. 11; of lobbying, art. IV, sec. 35. By code: Judicial officers, Code Civ. Proc., secs. 156, 157, 159.

Sex not a disqualification, for any occupation: Const. Cal., art. XX, sec. 18. Women eligible to educational offices: Stats. 1874, p. 356. Female teachers to receive same compensation as males: Stats. 1874, p. 938.

Fees, what judicial officers not to receive: Const. Cal., art. VI, sec. 15.

§ 843. County officer not to act as deputy. No county officer must be appointed or act as the deputy of another officer of the same county, except in cases where the pay of the officer so appointed amounts to a sum less than seventy-five dollars per month. En. Stats. 1873-4, 14. Am'd. 1875-6, 23.

Powers of deputies: Post, sec. 865.

County officers: Post, secs. 4101 et seq.

ARTICLE II.

RESTRICTIONS UPON THE RESIDENCE OF OFFICERS.

§ 852. Certain officers must reside in Sacramento.
§ 853. Absence from the state.
§ 854. Restrictions upon judicial officers.
§ 855. Restrictions upon county officers.

§ 852. Certain officers must reside in Sacramento. The following officers must reside at and keep their offices in the city of Sacramento:

The governor; secretary of state; controller; treasurer of state; attorney-general; surveyor-general; state printer; superintendent of public instruction; justices of the supreme court; clerk of the supreme court; reporters of the supreme court; and adjutant-general. En. March 12, 1872.

Residence, rules for determining: Ante, sec. 52. Justices of supreme court, eligibility based on: See Code Civ. Proc., sec. 156. Other judicial officers: See post, sec. 854.

"Absence from this state on business of the state or of the United States shall not affect the question of residence of any person": Const. Cal., art. XX, sec. 12.

§ 853. Absence from the state. No officer, state, county, or municipal, shall absent himself from the state for more than sixty days, unless upon business of the state, or with the consent of the legislature; provided, that in the case of illness or other urgent necessity, the governor in the case of state officers, the board of supervisors in the case of county officers, the city council or other governing body of the municipality in the case of municipal officers, shall, upon a proper showing of such illness or necessity, extend

the time herein limited for the absence of any such officer from the state. En. March 12, 1872. Am'd. 1883, 280; 1897, 78.

Absence from the state, of judicial officers, forfeiture of office for: Const. Cal., art. VI, sec. 9. Of governor, effect of: Const. Cal., art. V, sec. 16.

Business of the state, absence from state on, not to affect residence of any person: Const. Cal., art. XX, sec. 12.

Consent of the legislature, not to be given to absence of judicial officer: Const. Cal., art. VI, sec. 9.

§ 854. **Restrictions upon judicial officers.** Restrictions upon the residence of other judicial officers are contained in the Code of Civil Procedure. En. March 12, 1872.

Other judicial officers, restrictions on residence of: Code Civ. Proc., secs. 157-159.

§ 855. **Restrictions upon county officers.** Restrictions upon the residence of county officers are contained in part IV of this code. En. March 12, 1872.

County officers, restrictions upon residence of: Post, secs. 4101, 4119.

District and township officers, like restrictions: Post, sec. 4102.

ARTICLE III.

POWERS OF DEPUTIES.

§ 865. Powers of deputies.

§ 865. **Powers of deputies.** In all cases not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of his principal. En. March 12, 1872.

Cal.Rep.Cit. 77, 47; 107, 232; 110, 251.

Deputies, appointment of: Post, secs. 876, 894. Oath of: Post, sec. 910.

All necessary deputies, may be appointed by most county and township officers: Post, sec. 4112.

ARTICLE IV.

APPOINTMENT AND DURATION OF TERMS.

§ 875. Appointments, when not otherwise provided for.
§ 876. Deputies and subordinate officers.
§ 877. Number of deputies.
§ 878. Term of office, when not prescribed.
§ 879. Holding over until successor is qualified.

§ 875. Appointments when not otherwise provided for. Every officer, the mode of whose appointment is not prescribed by the constitution or statutes, must be appointed by the governor. En. March 12, 1872.

Cal.Rep.Cit. 110, 451.

Governor, to see that all offices filled: Ante, sec. 380, subd. 2. To make appointments mentioned in code: Ante, sec. 380, subd. 3.

Legislature may direct, whether officer shall be elected or appointed, if no provision on the subject, etc.: Const. Cal., art. XX, sec. 4.

§ 876. Deputies and subordinate officers. All assistants, deputies, and other subordinate officers, whose appointments are not otherwise provided for, must be appointed by the officer or body to whom they are respectively subordinate. En. March 12, 1872.

Cal.Rep.Cit. 64, 220; 67, 118; 100, 458.

Power to appoint deputies: See post, sec. 4112.

Aliens, not to be appointed deputies or clerks: Stats. 1880, 23. See General Laws, title Aliens.

§ 877. Number of deputies. When the number of such deputies or subordinate officers is not fixed by law, it is limited only by the discretion of the appointing power. En. March 12, 1872.

Cal.Rep.Cit. 102, 252; 110, 251.

Discretion of the appointing power, extensive in case of county officers: Post, sec. 4112.

§ 878. Term of office, when not prescribed. Every office of which the duration is not fixed by law, is held at the pleasure of the appointing power. En. March 12, 1872.

Cal.Rep.Cit. 64, 220; 100, 457.

Similar constitutional provisions: Art. XX, sec. 16.

§ 879. Holding over until successor is qualified. Every officer must continue to discharge the duties of his office,

although his term has expired, until his successor has qualified. En. March 12, 1872.

Cal.Rep.Cit. 49, 411; 49, 412; 49, 413; 60, 289; 62, 565; 62, 567; 62, 570; 63, 128; 66, 657; 69, 520; 87, 478; 87, 479; 93, 156; 93, 157; 107, 237; 109, 388; 116, 110; 116, 114; 122, 189; 136, 654; 138, 15.

Resignation of office: See post, sec. 995.

ARTICLE V.

NOMINATIONS AND COMMISSIONS OF OFFICERS.

§ 889. Nominations to senate must be in writing.
§ 890. Resolution of concurrence.
§ 891. Commissions by the governor.
§ 892. Form of commissions.
§ 893. Other commissions.
§ 894. Appointment of deputies, etc., how made.

§ 889. Nominations to senate must be in writing. Nominations made by the governor to the senate must be in writing, designating the residence of the nominee and the office for which he is nominated. En. March 12, 1872.

§ 890. Resolution of concurrence. Whenever the senate concurs in a nomination, its secretary must immediately deliver a copy of the resolution of concurrence, certified by the president and secretary, to the secretary of state, and another copy, certified by the secretary, to the governor. En. March 12, 1872.

§ 891. Commissions by the governor. The governor must commission:

1. All officers elected by the people, whose commissions are not otherwise provided for;
2. All officers elected by the legislature;
3. All officers of the militia;
4. All officers appointed by the governor, or by the governor with the advice and consent of the senate;
5. United States senators. En. March 12, 1872.

Cal.Rep.Cit. 85, 518; 138, 36.

Duties of governor: See ante, sec. 380.

Appointments when not otherwise provided: See ante, sec. 875.

Register of appointments, governor to cause to be kept: Ante, sec. 382, subd. 4.

§ 892. Form of commissions. The commissions of all officers commissioned by the governor must be issued in

the name of the people of this state, and must be signed by the governor and attested by the secretary of state, under the great seal. En. March 12, 1872.

Similar constitutional provision: Const. Cal., art. V, sec. 14.

§ 893. **Other commissions.** The commissions of all other officers, where no special provision is made by law, must be signed by the presiding officer of the body, or by the person making the appointment. En. March 12, 1872.

Cal.Rep.Cit. 138, 86.

§ 894. **Appointment of deputies, etc., how made.** The appointment of deputies, clerks and subordinate officers, when not otherwise provided for, must be made in writing, filed in the office of the appointing power or the office of its clerk. En. March 12, 1872.

Appointment of deputies, by whom made: Ante, sec. 876. Filed where made by county officers, etc.: Post, sec. 4113. Oath, how taken, and where filed: Post, sec. 910.

ARTICLE VI.

OATH OF OFFICE.

§ 904. Oath, form of.
§ 905. Oath of governor and lieutenant-governor.
§ 906. Oath of members of the legislature.
§ 907. Oath, when taken.
§ 908. Oath, before whom taken.
§ 909. Oath, where filed.
§ 910. Oath of deputies.

§ 904. **Oath, form of.** Before any officer enters on the duties of his office, he must take and subscribe the following oath:

"I do swear [or affirm] that I will support the constitution of the United States and the constitution of the state of California, and that I will faithfully discharge the duties of the office of —— according to the best of my ability." En. March 12, 1872.

Cal.Rep.Cit. 75, 452; 79, 109.

Provision constitutional: See Const. Cal., art. XX, sec. 3.

§ 905. **Oath of governor and lieutenant-governor.** The governor and lieutenant-governor must take the official oath in the presence of both houses of the legislature, in convention assembled, and an entry of the fact must be made upon the journals of each house. En. March 12, 1872.

§ 906. Oath of members of the legislature. Members of the legislature may take the oath of office at any time during the term for which they were elected. En. March 12, 1872.

§ 907. Oath, when taken. Whenever a different time is not prescribed by law, the oath of office must be taken, subscribed, and filed within ten days after the officer has notice of his election or appointment, or before the expiration of fifteen days from the commencement of his term of office, when no such notice has been given. En. March 12, 1872.

Cal.Rep.Cit. 57, 621; 63, 128; 63, 176; 79, 109; 85, 511; 85, 512; 85, 513; 127, 350; 127, 351.

When must qualify: See post, sec. 947. See mandatory section: Post, sec. 947.

§ 908. Oath, before whom taken. Except when otherwise provided, the oath may be taken before any officer authorized to administer oaths. En. March 12, 1872.

Administration of oaths, and affirmations: Code Civ. Proc., secs. 2093-2097.

§ 909. Oath, where filed. Every oath of office certified by the officer before whom the same was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

First—The oath of all officers whose authority is not limited to any particular county, in the office of the secretary of state.

Second—The oath of all officers, elected or appointed for any county, and of all officers whose duties are local, or whose residence in any particular county is prescribed by law, in the offices of the clerks of their respective counties.

Third—Each judge of a superior court and county clerk must, so soon as he has taken and subscribed his official oath, file a copy thereof, signed with his own proper signature, in the office of the secretary of state. En. March 12, 1872. Am'd. 1877-8, 25; 1880, 20.

Cal.Rep.Cit. 75, 452; 79, 109; 79, 110; 79, 111.

§ 910. Oath of deputies. Deputies, clerks, and subordinate officers must, within ten days after receiving notice of their appointment, take and file an oath in the manner required of their principals. En. March 12, 1872.

Cal.Rep.Cit. 107, 233.

ARTICLE VII.

PROHIBITIONS APPLICABLE TO CERTAIN OFFICERS.

§ 920. Certain officers not to be interested in contracts.
§ 921. No purchasers or vendors at certain sales.
§ 922. Contracts in violation, voidable.
§ 923. Certain officers prohibited from dealing in scrip, etc.
§ 924. Auditing officers, duties of.
§ 925. Treasurer, duties of.
§ 926. When settlements must be withheld.

§ 920. Certain officers not to be interested in contracts. Members of the legislature, state, county, city and township officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members. En. March 12, 1872.

Cal.Rep.Cit. 98, 433; 125, 122; 125, 128.

Officers interested in official contracts, liability for: Pen. Code, sec. 71.

§ 921. No purchasers or vendors at certain sales. State, county, township, and city officers must not be purchasers at any sale, nor vendors at any purchase made by them, in their official capacity. En. March 12, 1872.

Cal.Rep.Cit. 125, 122.

Penalty for violation of section: Pen. Code, sec. 71.

Removal of officers for misconduct: See post, Appendix, title Officers.

§ 922. Contracts in violation, voidable. Every contract made in violation of any of the provisions of the two preceding sections may be avoided at the instance of any party except the officer interested therein. En. March 12, 1872.

Cal.Rep.Cit. 98, 433; 125, 122.

§ 923. Certain officers prohibited from dealing in scrip, etc. The state treasurer and controller, the several county, city, or town officers of this state, their deputies and clerks, are prohibited from purchasing or selling, or in any manner receiving to their own use or benefit, or to the use or benefit of any person or persons whatever, any state, county, or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state, or any county or city thereof, except evidences of indebtedness issued to or held by them for services rendered as such

officer, deputy, or clerk, and evidences of the funded indebtedness of such state, city, town, or corporation. En. March 12, 1872.

Liability for violation of section: Pen. Code, sec. 71.

§ 924. Auditing officers, duties of. Every officer whose duty it is to audit and allow the accounts of other state, county, city, or town officers must, before allowing such accounts, require each of such officers to make and file with him an affidavit that he has not violated any of the provisions of this article. En. March 12, 1872.

False or fraudulent claim, presentation felonious: Pen. Code, sec. 72.

Violation of any of the provisions of article, information to cause suspension of settlement or payment: Post, sec. 926.

§ 925. Treasurer, duties of. Officers charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the state, county, city, or town, when the same has been purchased, sold, received, or transferred contrary to any of the provisions of this article. En. March 12, 1872.

§ 926. When settlements must be withheld. Every officer charged with the disbursement of public moneys, who is informed by affidavit that any officer whose account is about to be settled, audited, or paid by him, has violated any of the provisions of this article, must suspend such settlement or payment, and cause such officer to be prosecuted for such violation, by the district attorney of the county. In case there be judgment for the defendant upon such prosecution, the respective officer may proceed to settle, audit, or pay such account, as if no such affidavit had been filed. En. March 12, 1872. Am'd. 1873-4, 14.

ARTICLE VIII.

SALARIES OF OFFICERS WHEN TITLE IS CONTESTED.

§ 936. Title contested, salary, payment of.
§ 937. Pendency of suit must be certified by the clerk.

§ 936. Title contested, salary, payment of. When the title of the incumbent of any office in this state is contested by proceedings instituted in any court for that purpose, no warrant can thereafter be drawn or paid for

any part of his salary until such proceedings have been finally determined; provided, however, that this section shall not be construed to apply to any party to a contest or proceeding now pending or hereafter instituted who holds the certificate of election or commission of office, and discharges the duties of the office; but such party shall receive the salary of such office, the same as if no such contest or proceeding was pending. En. March 12, 1872. Am'd. 1891, 28.

Cal.Rep.Cit. 138, 85; 138, 87; 138, 88.

Contesting elections: See Code Civ. Proc., secs. 1111-1127. For members of legislature: Ante, secs. 273-283. For governor or lieutenant-governor: Ante, secs. 288-295.

§ 937. Pendency of suit must be certified by the clerk. As soon as such proceedings are instituted, the clerk of the court in which they are pending must certify the facts to the officers whose duty it would otherwise be to draw such warrant or pay such salary, except in the cases included in the proviso to the foregoing section. En. March 12, 1872. Am'd. 1891, 28.

ARTICLE IX.

BONDS OF OFFICERS.

§ 947. Time for filing bond.
§ 948. Approval, filing, etc., bonds of state officers.
§ 949. Bond of secretary of state, where filed.
§ 950. Bonds of county and township officers.
§ 951. Record of official bond.
§ 952. Approval must be indorsed on bond.
§ 953. Bond not to be filed before approval.
§ 954. Condition of bond.
§ 955. Justification of sureties.
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§ 957. Custody of official bonds.
§ 958. Form of bonds.
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§ 960. Same.
§ 961. Suit on bonds.
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§ 963. Defects in form, approval, filing, etc., not to vitiate.
§ 964. Insufficiency of sureties.
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§ 966. Force of original bond.
§ 967. Liability of officers and sureties.
§ 968. Separate judgments on bonds.
§ 969. Contribution between sureties.
§ 970. Discharge of sureties.
§ 971. Persons appointed to fill vacancies, bonds of.
§ 972. Release of sureties.
§ 973. Same.
§ 974. Same.
§ 975. Office declared vacant for want of official bond.

Part 3 Title 1

§ 976. Supplemental bond.
§ 977. Release, discharge, etc., of surety, effect of.
§ 978. Supplemental bond on withdrawal, removal, etc., of surety.
§ 979. Same.
§ 980. Sureties not released from what damages or liabilities, etc.
§ 981. Provisions of article apply to bonds of administrators, receivers, etc.
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§ 984. Same.
§ 985. Bonds of deputies, clerks, etc.
§ 986. Bond of county clerk, where filed.
§ 987. Enforcement of contract to sell land affected by lien.

§ 947. Time for filing bond. Every official bond must be filed in the proper office within the time prescribed for filing the oath, unless otherwise expressly provided by statute. En. March 12, 1872.

Cal.Rep.Cit. 57, 621; 63, 176.

Time prescribed for filing oath: Ante, sec. 907.

Execution: See post, sec. 950.

Irregularities in bond: See post, sec. 963.

Continuing liability on bond: See post, sec. 959.

§ 948. Approval, filing, etc., bonds of state officers. Unless otherwise prescribed by statute, the official bonds of state officers must be approved by the governor, and filed and recorded in the office of the secretary of state. En. March 12, 1872.

Approval, indorsed on bond: Post, sec. 952. Defect in: See post, sec. 963.

Recording: Post, sec. 951.

§ 949. Bond of secretary of state, where filed. The official bond of the secretary of state must, after it is recorded, be filed in the office of the treasurer of state. En. March 12, 1872.

§ 950. Bonds of county and township officers. Unless otherwise prescribed by statute, the official bonds of county and township officers must be approved by the judge of the superior court, recorded in the office of the county recorder, and then filed in the county clerk's office. En. March 12, 1872. Am'd. 1880, 20.

Recording and filing bonds: See post, secs. 951, 953, 986.

§ 951. Record of official bond. Official bonds must be recorded in a book kept for that purpose, and entitled "Record of Official Bonds." En. March 12, 1872.

§ 952. Approval must be indorsed on bond. The approval of every official bond must be indorsed thereon and signed by the officer approving the same. En. March 12, 1872.

§ 953. Bond not to be filed before approval. No officer with whom any official bond is required to be filed must file such bond until approved. En. March 12, 1872.

§ 954. Condition of bond. The condition of an official bond must be that the principal will well, truly, and faithfully perform all official duties then required of him by law, and also all such additional duties as may be imposed on him by any law of the state of California. Such bond must be signed by the principal and at least two sureties. En. March 12, 1872.

Binding upon principal and sureties: See post, sec. 960.

§ 955. Justification of sureties. The officer whose duty it is to approve official bonds required of state, county, city and county, or township officers, must not accept or approve any such bond, unless each of the sureties severally justify before an officer authorized to administer oaths as follows:

1. On a bond given by a state officer that such surety is a resident and freeholder or householder, within this state; and on a bond given by a county, city and county, or township officer that such surety is a resident and freeholder or householder, within such county, city and county, or within an adjoining county or city and county.

2. That such surety is worth the amount for which he becomes surety, over and above all his debts and liabilities in unincumbered property, situated within this state, exclusive of property exempt from execution and forced sale.

3. A member of the board of supervisors shall not be accepted as surety upon the official bond of any county, city and county, or township officer of his county; nor shall the sheriff, clerk, tax collector, treasurer, recorder, auditor, assessor, or district attorney of the same county or city and county, become sureties upon official bonds for each other.

4. A corporation such as is mentioned in section ten hundred and fifty-six of the Code of Civil Procedure of this

state, may become and shall be accepted as sole and sufficient surety upon any bond or undertaking authorized or required by the provisions of this code or of any law of this state, subject to the provisions of said section, and those of section ten hundred and fifty-seven of the same code. En. March 12, 1872. Am'd. 1873-4, 72; 1889, 220.

Justification of sureties: Compare Code Civ. Proc., sec. 1057.

Must be joint and several: See post, sec. 958.

§ 956. Sureties for less than the penal sum. When the penal sum of any bond required to be given, amounts to more than one thousand dollars, the sureties may become severally liable for portions of not less than five hundred dollars thereof, making in the aggregate, at least two sureties for the whole penal sum. And if any such bond becomes forfeited an action may be brought thereon against all or any number of the obligors, and judgment entered against them, either jointly or severally, as they may be liable. The judgment must not be entered against a surety severally bound for a grater sum than that for which he is specially liable by the terms of the bond. Each surety is liable to contribution to his co-sureties in proportion to the amount for which he is liable. Any corporation, such as is mentioned in section nine hundred and fifty-five of this code, may become one of such sureties, or be accepted as sole and sufficient surety. En. March 12, 1872. Am'd. 1889, 220.

Cal.Rep.Cit. 74, 876.

§ 957. Custody of official bonds. Every officer with whom official bonds are filed must carefully keep and preserve the same, and give certified copies thereof to any person demanding the same, upon being paid the same fees as are allowed by law for certified copies of papers in other cases. En. March 12, 1872.

§ 958. Form of bonds. All official bonds must be in form joint and several, and made payable to the state of California in such penalty and with such conditions as required by this chapter, or the law creating or regulating the duties of the office. En. March 12, 1872.

Cal.Rep.Cit. 64, 217; 73, 270; 74, 875.

§ 959. Bonds cover what breaches and duties. Every official bond executed by any officer pursuant to law is in

force and obligatory upon the principal and sureties therein for any and all breaches of the conditions thereof committed during the time such officer continues to discharge any of the duties of or hold the office, and whether such breaches are committed or suffered by the principal officer, his deputy, or clerk. En. March 12, 1872.

Cal.Rep.Cit. 64, 217; 109, 389.

§ 960. **Same.** Every such bond is in force and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be required of such officer by any law enacted subsequently to the execution of such bond, and such condition must be expressed therein. En. March 12, 1872.

Cal.Rep.Cit. 64, 217; 99, 499.

Condition of official bond, to provide for additional duties: Ante, sec. 954.

§ 961. **Suit on bonds.** Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein to and for the state of California, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity; and any person so injured or aggrieved may bring suit on such bond, in his own name, without an assignment thereof. En. March 12, 1872.

Cal.Rep.Cit. 64, 217; 74, 375; 99, 499.

§ 962. **Same.** No such bond is void on the first recovery of a judgment thereon; but suit may be afterwards brought, from time to time, and judgment recovered thereon by the state of California, or by any person to whom a right of action has accrued against such officer and his sureties, until the whole penalty of the bond is exhausted. En. March 12, 1872.

Cal.Rep.Cit. 64, 218.

Compare, as to bond of executor or administrator: Code Civ. Proc., secs. 1387 et seq.

§ 963. **Defects in form, approval, filing, etc., not to vitiate.** Whenever an official bond does not contain the substantial matter or conditions required by law, or there are any defects in the approval or filing thereof, it is not

void so as to discharge such officer and his sureties; but they are equitably bound to the state or party interested; and the state or such party may, by action in any court of competent jurisdiction, suggest the defect in the bond, approval, or filing, and recover the proper and equitable demand or damages from such officer and the persons who intended to become and were included as sureties in such bond. En. March 12, 1872.

Cal.Rep.Cit. 56, 627; 63, 128; 64, 218; 64, 219; 78, 157.

§ 964. **Insufficiency of sureties.** Whenever it is shown by the affidavit of a credible witness, or otherwise comes to the knowledge of the judge, court, board, officer, or other person whose duty it is to approve the official bond of any officer, that the sureties or any one of them have, since such bond was approved, died, removed from the state, become insolvent, or from any other cause have become incompetent or insufficient sureties on such bond, the judge, court, board, officer, or other person may issue a citation to such officer, requiring him, on a day therein named, not less than three nor more than ten days after date, to appear and show cause why such office should not be vacated, which citation must be served and return thereof made as in other cases. If the officer fails to appear and show good cause why such office should not be vacated, on the day named, or fails to give ample additional security, the judge, court, board, officer, or other person must make an order vacating the office, and the same must be filled as provided by law. En. March 12, 1872.

Discharge of sureties: See post, sec. 970.

§ 965. **Form of additional bond.** The additional bond must be in such penalty as directed by the court, judge, board, officer, or other person, and in all other respects similar to the original bond, and approved by and filed with the same officer as required in case of the approval and filing of the original bond. Every such additional bond so filed and approved is of like force and obligation upon the principal and sureties therein, from the time of its execution, and subjects the officer and his sureties to the same liabilities, suits, and actions as are prescribed respecting the original bonds of officers. En. March 12, 1872.

§ 966. Force of original bond. In no case is the original bond discharged or affected when an additional bond has been given, but the same remains of like force and obligation as if such additional bond had not been given. En. March 12, 1872.

§ 967. Liability of officers and sureties. The officer and his sureties are liable to any party injured by the breach of any condition of an official bond, after the execution of the additional bond, upon either or both bonds, and such party may bring his action upon either bond, or he may bring separate actions on the bonds respectively, and he may allege the same cause of action, and recover judgment therefor in each suit. En. March 12, 1872.

§ 968. Separate judgments on bonds. If separate judgments are recovered on the bonds by such party for the same cause of action, he is entitled to have execution issued on such judgments respectively; but he must only collect, by execution or otherwise, the amount actually adjudged to him on the same causes of action in one of the suits, together with the costs of both suits. En. March 12, 1872.

§ 969. Contribution between sureties. Whenever the sureties on either bond have been compelled to pay any sum of money on account of the principal obligor therein, they are entitled to recover, in any court of competent jurisdiction, of the sureties on the remaining bond a distributive part of the sum thus paid, in the proportion which the penalties of such bonds bear one to the other, and to the sums thus paid, respectively. En. March 12, 1872.

§ 970. Discharge of sureties. Whenever any sureties on the official bond of any officer wish to be discharged from their liability, they and such officer may procure the same to be done, if such officer will execute a new bond with sufficient sureties in like form, penalty, and conditions, and to be approved and filed as the original bond. Upon the filing and approval of the new bond, such first sureties are exonerated from all further liability; but their bond remains in full force as to all liabilities incurred previous to the approval of such new bond. The liability of the sureties in such new bond is in all respects the same

and may be enforced in like manner as the liability of the sureties in the original bond. En. March 12, 1872.

Discharge of sureties: Ante, sec. 964.

Release of sureties: See post, sec. 972.

§ 971. Persons appointed to fill vacancies, bonds of. Any person appointed to fill a vacancy, before entering upon the duties of the office must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as hereinbefore provided. En. March 12, 1872.

§ 972. Release of sureties. Any surety on the official bond of a city, town, county, or state officer, may be relieved from liabilities thereon afterwards accruing by complying with the provisions of the three sections following. En. March 12, 1872.

Cal.Rep.Cit. 59, 450; 77, 49.

§ 973. Same. Such surety must file with the judge, court, board, officer, or other person authorized by law to approve such official bond, a statement, in writing, setting forth the desire of the surety to be relieved from all liabilities thereon afterwards arising, and the reasons therefor, which statement must be subscribed and verified by the affidavit of the party filing the same. En. March 12, 1872.

Cal.Rep.Cit. 59, 450.

§ 974. Same. A copy of the statement must be served on the officer named in such official bond, and due return or affidavit of service made thereon as in other cases. En. March 12, 1872.

Cal.Rep.Cit. 59, 450.

§ 975. Office declared vacant for want of official bond. In ten days after the service of such notice, the judge, court, board, officer or other person with whom the same is filed, must make an order declaring such office vacant, and releasing such surety from all liability thereafter to arise on such official bond, and such office thereafter is in law vacant, and must be immediately filled by election or appointment, as provided for by law as in other cases of vacancy of such office, unless such officer has before that time given good and ample surety for the discharge

of all his official duties as required originally. En. March 12, 1872.

Cal.Rep.Cit. 59, 450.

§ 976. **Supplemental bond.** Whenever, from any cause, a surety on the official bond of any officer elected or appointed under the laws of this state withdraws from his bond or becomes insolvent, or from other cause becomes incompetent to remain as surety thereon, such officer may file a supplemental bond, executed and approved in the same manner as the original bond, for the amount for which the surety so withdrawing or incompetent was bound by the original bond. En. March 12, 1872.

§ 977. **Release, discharge, etc., of surety, effect of.** The release, discharge, voluntary withdrawal, or incompetency of a surety on any official bond, does not affect the bond as to the remaining sureties thereon, or alter or change their liability in any respect. En. March 12, 1872.

Cal.Rep.Cit. 77, 49.

§ 978. **Supplemental bond on withdrawal, removal, etc., of surety.** Whenever a surety on any official bond gives notice of intention to withdraw therefrom, or is removed, or becomes otherwise incompetent, the principal on the bond must, within ten days after such notice or disqualification, execute and file, subject to the same conditions as the original, a supplemental bond, wherein must be recited the names of the remaining original sureties, and the name or names of the new surety or sureties, and the respective amounts for which he or they become bound, who are substituted in lieu of the surety or sureties released or disqualified. En. March 12, 1872.

§ 979. **Same.** Whenever the original bond is given for an amount in excess of the sum required by law, if the withdrawal or removal of any surety does not reduce the bond below the amount required by law to be secured by sureties, then no supplemental or additional bond is required or necessary; and whenever any supplemental bond is so filed and approved, the officer with whom the bond is filed, or in whose office the same is recorded, must give ten days' notice—by publication in some paper published in the county, or if there is no paper in the county, then in the county nearest thereto in which a newspaper is

published, and in case of the bond of a state officer, in some paper at the city of Sacramento—of the fact of the filing of the bond and the name of the party withdrawing from the former and the substitute on the new bond; and until the filing and approval of the supplemental bond the sureties on the former bond are liable for all the acts of their principal. En. March 12, 1872.

§ 980. Sureties not released from what damages or liabilities, etc. No surety must be released from damages or liabilities for acts, omissions, or causes existing, or which arose before the making of the order mentioned in section 975, but such legal proceedings may be nad therefor in all respects as though no such order had been made. En. March 12, 1872.

Cal.Rep.Cit. 77, 49.

§ 981. Provisions of article apply to bonds of administrators, receivers, etc. The provisions of this article apply to the bonds of receivers, executors, administrators, and guardians. En. March 12, 1872.

Bonds of receivers: Post, sec. 982; Code Civ. Proc., secs. 566, 567.

Bonds of executors and administrators: Code Civ. Proc., secs. 1387-1407.

Bonds of guardians: Code Civ. Proc., secs. 1754, 1756, 1758, 1788, 1803-1805, 1807, 1809.

§ 982. Bonds of receivers, assignees, etc. All bonds or undertakings given by trustees, receivers, assignees, or officers of a court in an action or proceeding for the faithful discharge of their duties, where it is not otherwise provided, must be in the name of, and payable to, the state of California; and upon the order of the court where such action or proceeding is pending, may be prosecuted for the benefit of any and all persons interested therein. En. March 12, 1872.

The state the payee: See ante, sec. 958.

§ 983. Actions on official bonds, proceedings to charge realty of defendant. When an action is commenced in any court in this state for the benefit of the state, to enforce the penalty of, or to recover money upon an official bond or obligation, or any bond or obligation executed in favor of the state of California, or of the people of this

state, the attorney or other person prosecuting the action may file with the court in which the action is commenced an affidavit, stating either positively or on information and belief, that such bond or obligation was executed by the defendant, or one or more of the defendants (designating whom), and made payable to the people of the state, or to the state of California, and that the defendant or defendants have real estate or interest in lands (designating the county or counties in which the same is situated), and that the action is prosecuted for the benefit of the state; and thereupon the clerk receiving such affidavit must certify to the recorder of the county in which such real estate is situated the names of the parties to the action, the name of the court in which the action is pending, and the amount claimed in the complaint, with the date of the commencement of the suit. En. March 12, 1872.

Lis pendens: Code Civ. Proc., secs. 409, 755.

§ 984. **Same.** Upon receiving such certificate, the county recorder must indorse upon it the time of its reception, and such certificate must be filed and recorded in the same manner as notices of the pendency of an action affecting real estate; and any judgment recovered in such action is a lien upon all real estate situated in any county in which such certificate is so filed, belonging to the defendant, or to one or more of such defendants, for the amount that the owner thereof is or may be liable upon the judgment, from the filing of the certificate; and the fees due the clerk and recorder for the services required are a charge against the county where the suit is brought, to be recovered like other costs. En. March 12, 1872.

§ 985. **Bonds of deputies, clerks, etc.** Every officer or body appointing a deputy, clerk, or subordinate officer, may require an official bond to be given by the person appointed, and may fix the amount thereof. En. March 12, 1872.

Cal.Rep.Cit. 64, 218; 64, 224.

§ 986. **Bond of county clerk, where filed.** The official bond of the county clerk shall, after being recorded, be filed in the office of the county treasurer, and the safe-

keeping of the same is hereby made the duty of the county treasurer. En. Stats. 1873-4, 73.

Bonds of other county officers: Ante, sec. 950.

§ 987. Enforcement of contract to sell land affected by lien. In any action to compel the specific performance of an agreement to sell real estate affected by the lien created by the filing of the certificate mentioned in section nine hundred and eighty-four, which said agreement shall have been made prior to the filing of such certificate, but the purchase price under which said agreement shall not have become due until after the filing of said certificate, the judge of the superior court in which said action for specific performance is tried, shall, if the purchaser is otherwise entitled to specific performance of such agreement, order the said purchaser to pay the purchase price, or so much thereof as may be due, to the state treasurer, taking his receipt therefor. Upon such payment the purchaser shall be entitled to enforcement of specific performance of said agreement, and shall take said real estate, free from the liens created by the filing of said certificate. The moneys so paid to the state treasurer shall be held by him, pending the litigation mentioned in said certificate, and subject to the lien created by the filing of said certificate. En. Stats. 1885, 130.

ARTICLE X.

RESIGNATIONS, VACANCIES AND THE MODE OF SUPPLYING THEM.

§ 995. Resignations, to whom made.
§ 996. Vacancies, how they occur.
§ 997. Notice of removal, by and to whom given.
§ 998. Vacancies in legislature, how filled.
§ 999. Vacancies, how filled when not otherwise provided for.
§ 1000. Vacancies occurring during recess of the legislature.
§ 1001. Vacancies in certain state offices, how filled.
§ 1002. Vacancies in office of harbor commissioner or superintendent of public instruction, how filled.
§ 1003. Vacancies in board of directors of insane asylum.
§ 1003a. Term of appointee filling unexpired term.
§ 1004. Power and duty of officers filling unexpired terms.

§ 995. Resignations, to whom made. Resignations must be in writing, and made as follows:

1. By the governor and lieutenant-governor, to the legislature, if it is in session; and if not, then to the secretary of state.

2. By all officers commissioned by the governor, to the governor.

3. By senators and members of the assembly, to the presiding officers of their respective houses, who must immediately transmit the same to the governor.

4. By all county and township officers not commissioned by the governor, to the clerk of the board of supervisors of their respective counties.

5. By all other appointed officers, to the body or officer that appointed them.

6. In all cases not otherwise provided for, by filing the resignation in the office of the secretary of state. En. March 12, 1872.

Cal.Rep.Cit. 114, 172.

§ 996. Vacancies, how they occur. An office becomes vacant on the happening of either of the following events before the expiration of the term:

1. The death of the incumbent.

2. His insanity, found upon a commission of lunacy issued to determine the fact.

3. His resignation.

4. His removal from office.

5. His ceasing to be an inhabitant of the state, or, if the office be local, of the district, county, city, or township for which he was chosen or appointed, or within which the duties of his office are required to be discharged.

6. His absence from the state, without permission of the legislature, beyond the period allowed by law.

7. His ceasing to discharge the duties of his office for the period of three consecutive months, except when prevented by sickness, or when absent from the state by permission of the legislature.

8. His conviction of a felony, or of any offense involving a violation of his official duties.

9. His refusal, or neglect to file his official oath or bond within the time prescribed.

10. The decision of a competent tribunal declaring void his election or appointment. En. March 12, 1872.

Cal.Rep.Cit. 55, 80; 57, 621; 57, 622; 62, 568; 63, 176; 66, 656; 67, 12; 67, 118; 67, 119; 68, 283; 79, 111; 79, 112; 87, 479; 100, 539; 100, 540; 100, 541; 107, 240; 117, 620. Subd. 9—107, 241; 109, 389. Subd. 10—118, 395.

Subd. 2. Insanity, notice to officer empowered to fill vacancy: Post, sec. 997.

Subd. 3. Resignation: Ante, sec. 995.

Subd. 4. Removal of officer: See post, sec. 997; Code Civ. Proc., secs. 802-810; Pen. Code, secs. 758-772.

Subd. 5. Non-residence: Ante, secs. 52, 852-855.

Subd. 6. Absence from state: Ante, sec. 853.

Absence from state: See Const. Cal., art. VI, sec. 9, in the case of a judicial officer, and art. V, sec. 16, of same, in the case of the governor.

Subd. 8. Conviction of felony or misdemeanor in office, impeachment: Const. Cal., art. IV, secs. 17, 18; also Pen. Code, secs. 737-753. Court of impeachment: Code Civ. Proc., secs. 36-39. Removal of civil officers otherwise than by impeachment: Pen. Code, secs. 758-772. Notice to officer empowered to fill vacancy: Post, sec. 997.

Subd. 9. Failure to qualify, official oath, time prescribed for filing: Ante, sec. 907; and, generally, see ante, secs. 904-910. Bond, time prescribed for filing: Ante, sec. 947.

Subd. 10. Declaration that election or appointment void, notice to officer empowered to fill vacancy: Post, sec. 997.

Expiration of term: See ante, sec. 879.

§ 997. Notice of removal, by and to whom given. Whenever an officer is removed, declared insane, or convicted of a felony or offense involving a violation of his official duty, or whenever his election or appointment is declared void, the body, judge, or officer before whom the proceedings were had must give notice thereof to the officer empowered to fill the vacancy. En. March 12, 1872.

Cal.Rep.Cit. 85, 511; 100, 540.

§ 998. Vacancies in legislature, how filled. Whenever a vacancy occurs in either house of the legislature, the governor must at once issue a writ of election to fill such vacancy. En. March 12, 1872.

Constitutional foundation of section: Const. Cal., art. IV, sec. 12.

§ 999. Vacancies, how filled when not otherwise provided for. When any office becomes vacant, and no mode is provided by law for filling such vacancy, the governor must fill such vacancy by granting a commission, to expire at the end of the next session of the legislature or at the next election by the people. En. March 12, 1872.

Cal.Rep.Cit. 47, 447; 52, 167; 60, 289; 102, 14.

Constitutional basis of section: Const. Cal., art. V, sec. 8.

Governor's power to fill vacancies: Ante, sec. 380, subd. 3.

Vacancy, when none caused by expiration of term: Ante, sec. 380.

Elections to fill vacancies in offices: See post, sec. 1043.

§ 1000. Vacancies occurring during recess of the legislature. Whenever an office, the appointment to which is vested in the governor and senate, or in the legislature, either becomes vacant or the term of the incumbent of which expires during the recess of the legislature, the governor has power to appoint a person to such office; but the person so appointed can only hold the office until the adjournment of the next session of the legislature. En. March 12, 1872. Am'd. 1901, 283.

Cal.Rep.Cit. 87, 478.

§ 1001. Vacancies in certain state offices, how filled. A vacancy in the office of either the secretary of state, controller, treasurer, attorney-general, surveyor-general, or clerk of the supreme court, must be filled by a person appointed by the governor, who shall hold his office for the balance of the unexpired term. En. March 12, 1872. Am'd. 1875-6, 23.

Cal.Rep.Cit. 52, 167.

Controller, special election to fill vacancy: See post, sec. 1043.

§ 1002. Vacancies in office of harbor commissioner or superintendent of public instruction, how filled. A vacancy in the office of either the superintendent of public instruction or state harbor commissioner must be filled by a person appointed by the governor. En. March 12, 1872.

State harbor commissioner, vacancy to be filled by governor for unexpired portion of term: Post, sec. 2520.

§ 1003. Vacancies in board of directors of insane asylum. Any person appointed to fill a vacancy in the board of directors of the insane asylum holds only for the unexpired term of his predecessor. En. March 12, 1872.

§ 1003a. Term of appointee filling unexpired term. Except in the instances otherwise provided in the constitution, whenever a person has been or shall be appointed by the governor, or by the governor by and with the advice and consent of the senate, to fill a vacancy in any office, or to fill an office when the appointment is not made until after the expiration of the preceding term, the appointee holds office only for the balance of the unexpired term as provided by the law creating the office. En. Stats. 1903, 150.

§ 1004. Power and duty of officers filling unexpired terms. Any person elected or appointed to fill a vacancy, after filing his official oath and bond, possesses all the rights and powers, and is subject to all the liabilities, duties, and obligations of the officer whose vacancy he fills. En. March 12, 1872.

Cal.Rep.Cit. 81, 590.

ARTICLE XI.

PROCEEDINGS TO COMPEL DELIVERY OF BOOKS AND PAPERS BY OFFICERS TO THEIR SUCCESSORS.

§ 1014. Possession of books and papers.
§ 1015. Proceedings to compel delivery of.
§ 1016. Attachment and warrant to enforce.

§ 1014. Possession of books and papers. Every public officer is entitled to the possession of all books and papers pertaining to his office, or in the custody of a former incumbent, by virtue of his office. En. March 12, 1872.

Cal.Rep.Cit. 103, 493.

Books and papers, of former incumbent, in case of notary public: Ante, sec. 796.

§ 1015. Proceedings to compel delivery of. If any person, whether a former incumbent or another person, refuse or neglect to deliver to the actual incumbent, any such books or papers, such actual incumbent may apply, by petition, to any court of record sitting in the county where the person so refusing or neglecting resides, or to any judge of the superior court residing therein, and the court or officer applied to must proceed in a summary way, after notice to the adverse party, to hear the allegations and proof of the parties, and to order any such books or

papers to be delivered to the petitioners. En. March 12, 1872. Am'd. 1880, 20.

Cal.Rep.Cit. 63, 175.

Penalty for refusal: See Pen. Code, secs. 76, 77.

§ 1016. Attachment and warrant to enforce. The execution of the order and the delivery of the books and papers may be enforced by attachment as for a witness, and, also, at the request of a petitioner, by a warrant directed to the sheriff or a constable of the county, commanding him to search for such books and papers, and to take and deliver them to the petitioner. En. March 12, 1872.

Cal.Rep.Cit. 63, 175.

ARTICLE XII.

MISCELLANEOUS PROVISIONS.

§ 1026. Seals of executive officers.
§ 1027. Great seal.
§ 1028. Executive and judicial officers may administer oaths.
§ 1029. Salaries of officers.
§ 1030. Office hours.
§ 1031. Signature of officers acting ex-officio.
§ 1032. Records open to public inspection, exceptions.

§ 1026. Seals of executive officers. Except where otherwise specially provided by law, the seals of office of the various executive officers are those in use by such officers at the time this code takes effect, and each of such officers must at once file a description and impression of such seal in the office of the secretary of state. En. March 12, 1872.

Seal defined, ante, sec. 14; great, post, sec. 1027; of inspector of gas meters, ante, sec. 578; of notary public, ante, sec. 794, subds. 7, 8; of commissioner of deeds, ante, sec. 812, subds. 4, 5; of fire department, post, sec. 3340.

§ 1027. Great seal. The great seal of the state is the one in use at the time of the adoption of this code. En. March 12, 1872.

Great seal: Const. Cal., art. V, sec. 13; ante, secs. 407, subd. 4, 408, subd. 3, 416, subd. 2.

§ 1028. Executive and judicial officers may administer oaths. Every executive and judicial officer may administer and certify oaths. En. March 12, 1872.

Cal.Rep.Cit. 56, 465; 128, 420.

Part 3 Title 1

Administration of oaths: Sections 179, 259, 2012, 2093, 2097, Code of Civil Procedure, and post, section 4118, provide what officers may administer oaths.

§ 1029. Salaries of officers. Unless otherwise provided by law, the salaries of officers must be paid out of the general fund in the state treasury, monthly, on the last day of each month. En. March 12, 1872.

Cal.Rep.Cit. 58, 578; 96, 415; 96, 416.

§ 1030. Office hours. Unless otherwise provided by law, every officer must keep his office open for the transaction of business from ten o'clock A. M. until four o'clock P. M. each day, except upon holidays. En. March 12, 1872.

Holidays: Ante, secs. 10, 11.

§ 1031. Signature of officers acting ex-officio. When an officer discharges ex-officio the duties of another office than that to which he is elected or appointed, his official signature and attestation must be in the name of the office the duties of which he discharges. En. March 12, 1872.

Cal.Rep.Cit. 69, 93; 95, 47.

§ 1032. Records open to public inspection, exceptions. The public records and other matters in the office of any officer are at all times, during office hours, open to the inspection of any citizen of this state. In all actions for divorce, the pleadings and the testimony taken and filed in said actions shall not be by the clerk with whom the same is filed, or the referee before whom the testimony is taken, made public, nor shall the same be allowed to be inspected by any person except the parties that may be interested, or the attorneys to the action, or by an order of the court in which the action is pending; a copy of said order must be filed with the clerk. In cases of attachment, the clerk of the court with whom the complaint is filed shall not make public the fact of the filing of such complaint, or of the issuing of such attachment, until after the filing of return of service of attachment. En. March 12, 1872. Am'd. 1873-4, 14.

Cal.Rep.Cit. 99, 531; 114, 549; 114, 550.

Public writings open to inspection: Code Civ. Proc., sec. 1892.

Divorce: Civ. Code, secs. 82-148.

Attachment: Code Civ. Proc., secs. 537-559.

Violation of section: Pen. Code, sec. 176.

New Sec 1023-1035-2.2

Part 3

TITLE II.

OF ELECTIONS.

Chapter I. General Provisions Relating to Elections, §§ 1041-1080.
II. Qualifications and Disabilities of Electors, §§ 1083-1084.
III. Registration of Electors, §§ 1094-1119.
IV. Election Precincts, §§ 1127-1132.
V. Boards of Election, §§ 1142-1150.
VI. Opening and Closing the Polls, §§ 1160-1164.
VII. Poll Lists, §§ 1174-1175.
VIII. Election Tickets and Ballots, §§ 1185-1216.
IX. Voting and Challenges, §§ 1224-1243.
X. Canvassing and Returning the Vote, §§ 1252-1268.
XI. Canvass of Returns; Declaration of Result; Commissions and Certificates of Election, §§ 1278-1297.
XII. Elections for Electors of President and Vice-President, §§ 1307-1322.
XIII. Elections for Members of Congress, §§ 1332-1347.
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CHAPTER I.

GENERAL PROVISIONS RELATING TO ELECTIONS.

Article I. Time of Holding Elections, §§ 1041-1043.
II. Election Proclamations, §§ 1053-1056.
III. Miscellaneous Provisions, §§ 1066-1073.
IV. County, City and County Boards of Election Commissioners, §§ 1075-1080.

ARTICLE I.

TIME OF HOLDING ELECTIONS.

§ 1041. General election, when to be held.
§ 1042. Judicial election. (Repealed.)
§ 1043. Special elections, when to be held.

§ 1041. General election, when to be held. There must be held throughout the state, on the first Tuesday after the first Monday of November, in the year eighteen hundred

and eighty, and in every second year thereafter, an election, to be known as the general election. En. March 12, 1872. Am'd. 1880, 77.

Cal.Rep.Cit. 52, 169; 56, 98; 58, 560; 62, 572; 62, 573; 62, 574; 130, 94.

Purity of elections, act relating to: See post, Appendix, title Elections.

§ 1042. Judicial election. (Repealed.) En. March 12, 1872. Rep. 1880, 77.

Cal.Rep.Cit. 52, 169.

§ 1043. Special elections, when to be held. Special elections are such as are held to supply vacancies in any office, and are held at such times as may be designated by the proper board or officer. En. March 12, 1872.

Cal.Rep.Cit. 52, 169; 55, 617; 114, 364; 130, 94.

Vacancies: Ante, secs. 996 et seq.

Designating time of election: See post, sec. 1053.

Act relating to special elections: See post, Appendix, title Elections.

ARTICLE II.

ELECTION PROCLAMATIONS.

§ 1053. Election proclamations by the governor.
§ 1054. Governor's proclamation, what to contain.
§ 1055. Publication and posting by supervisors.
§ 1056. Election proclamation by supervisors.

§ 1053. Election proclamations by the governor. At least thirty days before a general election, and whenever he orders a special election to fill a vacancy in the office of state senator or member of assembly, at least ten days before such special election the governor must issue an election proclamation, under his hand and the great seal of the state, and transmit copies thereof to the boards of supervisors of the counties in which such elections are to be held. En. March 12, 1872. Am'd. 1877-8, 25; 1880, 77.

Cal.Rep.Cit. 91, 435.

Opening and closing polls: See post, sec. 1160.

§ 1054. Governor's proclamation, what to contain. Such proclamation must contain:

1. A statement of the time of election, and of the offices to be filled.

2. An offer of rewards, in the following form: "And I do hereby offer a reward of one hundred dollars for the

arrest and conviction of any and every person violating any of the provisions of title IV, part I, of the Penal Code; such rewards to be paid until the total amount hereafter expended for the purpose reaches the sum of ten thousand dollars." En. March 12, 1872.

Cal.Rep.Cit. 55, 617; 91, 435.

Provisions of Penal Code; Secs. 40-64½ on crimes against the elective franchise.

§ 1055. **Publication and posting by supervisors.** The board of supervisors, upon the receipt of such proclamation, may, in case of general or special elections, cause a copy of the same to be published in some newspaper printed in the county, if any, and to be posted at each place of election at least ten days before the election, and in case of special elections to fill a vacancy in the office of state senator or member of assembly, the board of supervisors, upon receipt of such proclamation, may, in their discretion, cause a copy of the same to be published or posted as hereinbefore provided, except that such publication or posting need not be made for a longer period than five days before such election. En. March 12, 1872. Am'd. 1875-6, 24; 1877-8, 26; 1880, 77.

Cal.Rep.Cit. 53, 398; 56, 116; 91, 435; 91, 438.

§ 1056. **Election proclamation by supervisors.** Whenever a special election is ordered by the board of supervisors, they must issue an election proclamation, containing the statement provided for in subdivision 1, section 1054, and must publish and post it in the same manner as proclamations issued by the governor. En. March 12, 1872.

Cal.Rep.Cit. 55, 617; 55, 621; 91, 435.

Special elections: Ante, secs. 1043, 1053.

ARTICLE III.

MISCELLANEOUS PROVISIONS.

§ 1066. Plurality to elect.
§ 1067. Proceedings on a tie vote other than for governor or lieutenant-governor.
§ 1068. Same, on tie vote for governor or lieutenant-governor.
§ 1069. Electors privileged from arrest, when.
§ 1070. Electors exempt from militia duty, when.
§ 1071. No fees for certificate of registration.
§ 1072. Compensation of officers of election.
§ 1073. Supervisors to have blanks prepared.

§ 1066. Plurality to elect. The person receiving at any election the highest number of votes for any office to be filled at such election, is elected thereto. En. March 12, 1872.

Cal.Rep.Cit. 132, 284.

Plurality elects: Const. Cal. 1879, art. XX, sec. 13.

§ 1067. Proceedings on a tie vote other than for governor or lieutenant-governor. If at any election, except that for governor or lieutenant-governor, two or more persons receive an equal and the highest number of votes, there is no choice, and a special election to fill such office must be ordered by the proper board or officer. En. March 12, 1872.

Cal.Rep.Cit. 132, 284.

Special election: Ante, sec. 1043.

§ 1068. Same, on tie vote for governor or lieutenant-governor. In case any two or more persons have an equal and highest number of votes for either governor or lieutenant-governor, the legislature must, by joint vote of both houses, chose one of the persons to fill such office. En. March 12, 1872.

Constitutional basis of section: See Const. Cal. 1879, art. V, sec. 4.

§ 1069. Electors privileged from arrest, when. Electors are privileged from arrest, except for an indictable offense, during their attendance on the election, and in going to and returning from the same. En. March 12, 1872.

Constitutional provision, of same character: Const. Cal. 1879, art. II, sec. 2.

§ 1070. Electors exempt from militia duty, when. No elector is obliged to perform militia duty on the day of election, except in time of war or public danger. En. March 12, 1872.

Basis of section: See Const. Cal. 1879, art. II, sec. 3.

§ 1071. No fees for certificate of registration. No fees must be charged for registration or certificates thereof. En. March 12, 1872.

§ 1072. Compensation of officers of election. Each member upon a board of election in any county, or city or

county, in the state, and each clerk thereof, shall receive as compensation for his services upon such board, a sum not to exceed ten dollars, which sum shall be paid out of the treasury of the county, or city or county, in which such persons act. En. March 12, 1872. Am'd. 1889, 423.

§ 1073. Supervisors to have blanks prepared. The necessary printed blanks for poll lists, tally lists, lists of voters, oath, and returns, together with envelopes in which to inclose returns, must be furnished by the board of supervisors to the officers of each election precinct at the expense of the county. En. March 12, 1872.

ARTICLE IV.

COUNTY, CITY AND COUNTY BOARDS OF ELECTION COMMISSIONERS.

New article approved March 28, 1895; Stats. 1895, p. 341.

§ 1074. No section of this number.
§ 1075. Election commissioners.
§ 1076. Powers of commissioners.
§ 1077. Secretary and clerks of commissioners.
§ 1078. Secretary of commissioners, powers and duties.
§ 1079. Expenditures.
§ 1080. Effect of act creating election commissioners.

§ 1074. No section of this number.

§ 1075. Election commissioners. The board of supervisors of each county is ex-officio the board of election commissioners in and for the county, and the common council, or other governing body of a city, is ex-officio the board of election commissioners in and for such city; provided, that in cities and cities and counties of this state having one hundred and fifty thousand or more inhabitants the board of election commissioners shall consist of four persons, citizens and electors of such city, or city and county, each of whom must be a freeholder, and have been an actual resident of said city and county at least five years preceding his appointment, who shall be appointed by the mayor; provided, that the respective executive committees of the state committees of either of the political parties, who may be entitled under the provisions of this act to have members of their party appointed as members of said board of election commissioners, shall have the right, within ten days after such appointment,

to file with the mayor a written protest against the appointment of a member of said board of election commissioners, as having been appointed as one of affiliation with said party, on the grounds that said appointee is not a person of well-known affiliation and standing with said party from which he has been appointed; and the mayor thereupon shall make another appointment in the place of the party against whom the protest has been filed. The members of said commission shall be ineligible to any other office or public employment, elective or appointive, during the term for which they have been appointed and for one year thereafter. Two of the persons so appointed shall be selected from the body of citizens and electors of such city, or city and county, of known affiliation with and belonging to the political party or organization which at the last presidential election held in such city, or city and county, polled within said city, or city and county, the highest number of votes cast for the candidates of the political party for presidential electors at such election; and the two remaining members of said board shall be selected from the body of electors of such city, or city and county, of known affiliation with and belonging to the political party which, at the last presidential election held at such city, or city and county, polled within such city, or city and county, the next highest number of votes cast for the candidates for presidential electors of a political party. The members of said commission shall, every two years, choose one of their number as chairman; in the event of their failure to select a chairman in five ballots, the oldest of said members in point of years shall be chairman. The person first appointed as such board of election commissioners shall be appointed on the first Monday of July, eighteen hundred and ninety-five, and shall each hold their office for the term of four years from and after the date of their appointment, except that of those first appointed, two (one belonging to each political party or organization as aforesaid), to be designated by the mayor, shall retire at the end of two years, when their successor shall be appointed by the mayor. Whenever any vacancy shall occur in the said board, such vacancy shall be filled by appointment as herein prescribed, and the person so appointed to fill such vacancy shall be selected in the same manner and from the same political

party or organization with which his predecessor in office affiliated and belonged at the time of his appointment thereto, and shall hold office for the balance of the unexpired term to which he was appointed. The salary of each member of the board of election commissioners in and for a city, or city and county, having one hundred thousand or more inhabitants, shall be seven hundred and fifty dollars per annum, payable in equal monthly installments, out of the treasury of such city, or city and county, in the same manner as the salaries of other officers of such city, or city and county, are paid. En. Stats. 1895, 338.

Cal.Rep.Cit. 111, 99; 111, 100.

This act was declared unconstitutional in the case of Denman v. Broderick, 111 Cal. 96.

§ 1076. **Powers of commissioners.** The board of election commissioners, as provided for in this article, shall, within their respective counties, cities, or cities and counties, be invested with, and shall exercise all the powers conferred, and shall discharge and perform all the duties imposed by this code or by any law of this state, upon boards of supervisors of the several counties, or upon the common council or other governing body of cities, or upon any other board or body, in respect to the conduct, control, management, and supervision of elections, and all matters pertaining to elections held within the respective counties, cities, or cities and counties, as the same are now or may be hereafter prescribed by law. En. Stats. 1895, 339.

§ 1077. **Secretary and clerks of commissioners.** The county clerk is ex-officio clerk of the board of election commissioners of the county, and the clerk or secretary of the common council or other governing body of a city is ex-officio the clerk or secretary of the board of election commissioners; provided, that in cities, or cities and counties, of this state having one hundred and fifty thousand or more inhabitants, the board of election commissioners shall appoint a suitable person, not one of their own number, to act as secretary, at a salary not to exceed two hundred and fifty dollars per month, payable in the same manner as the salaries of the commissioners are paid. Such secretary shall hold his office during the pleasure of the said board.

The secretary of the board of election commissioners shall not, during the term of his office, engage in any other calling or trade, or profession or employment, and shall be ineligible to be a candidate or delegate to any convention which shall nominate candidates for office, and he shall be ineligible to be voted for for any office while acting as such secretary; and if these provisions of the law are not obeyed, it shall be the duty of the board of election commissioners forthwith to declare his place vacated, and the vacancy shall be filled in the same manner and terms as provided for in the original appointment.

Each member of the board of election commissioners, and the secretary elected by said board of election commissioners, shall, within fifteen days after receiving notice of their appointment, take the usual oath of office before any judge of the superior court of said county, or city and county, and said oaths of office shall be filed with the county clerk of said city and county.

The board of election commissioners shall have the power to appoint all deputies, and such clerks as may be necessary, and to fix their salaries at the time of their employment. All deputies and clerks thus appointed shall be equally divided between the representatives of the political parties that polled the highest and the next to the highest number of votes at the preceding presidential election. The salaries of all deputies and clerks that may be appointed by said board of election commissioners shall be payable in equal monthly installments out of the treasury of said city, or city and county, in the same manner as the salaries of other officers of such city, or city and county, are paid.

The members of the board of election commissioners, the secretary of the board of election commissioners, all deputies and clerks appointed by the board of election commissioners, and all election officers, shall have the power to administer oaths; and any false oaths taken before them, or either of them, shall be deemed to be perjury, and the person so convicted thereof shall be punished according to law. En. Stats. 1895, 339.

§ 1078. Secretary of commissioners, powers and duties. The county clerk of each county, and the clerk or secretary of the common council of a city, shall, within their

respective counties, or cities, exercise all the powers conferred, and shall discharge and perform all the duties imposed by this code, or by any law of this state, upon such officers in respect to the conduct, management, and supervision of elections, and matters pertaining to elections, held within the respective counties, or cities, as the same are now or may be hereafter prescribed by law; provided, that in cities, or cities and counties, having one hundred and fifty thousand or more inhabitants, the secretary of the board of election commissioners, under the direction of the board of election commissioners, shall exercise all the powers conferred, and shall discharge and perform all the duties imposed by this code, or by any law of this state, upon the county clerk or any other officer in such cities, or cities and counties, in respect to the conduct and supervision of matters relating to elections held within such cities, or cities and counties, as the same are now or may be hereafter prescribed by law. En. Stats. 1895, 340.

§ 1079. Expenditures. Whenever the clerk, secretary, or any officer of a county, city, or city and county, is charged with the performance of any official duty in respect to elections which involves the expenditure of public moneys, such expenditures shall be subject to the control and supervision of the board of election commissioners; and when any printing or other service is to be performed, or materials are to be furnished, the amount of which in the aggregate shall exceed the value of five hundred dollars, it shall be the duty of the board of election commissioners to invite proposals for the work, or the furnishing of the materials, and to let the contract for the same to the lowest responsible bidder therefor, in the same manner and upon the same conditions as is required in the letting of contracts for doing other and similar work, or furnishing other and similar materials, for county, city, or city and county purposes; provided, that no such proposal or bid shall be required for the contract to print ballots, if the time within which such ballots must be had does not reasonably admit of such proposal and bid. En. Stats. 1895, 340.

§ 1080. Effect of act creating election commissioners. Nothing contained in this article affects any of the provisions of this code, or of any statute of this state,

touching the registration and qualification of voters and the method of calling, holding, and conducting elections, in force in any county, city, or city and county; but such provisions and statutes are recognized as continuing in force, except so far as they are inconsistent with the provisions of this article upon the subject to which this article relates. En. Stats. 1895, 341.

CHAPTER II.

QUALIFICATIONS AND DISABILITIES OF ELECTORS.

§ 1083. Qualifications of a voter.
§ 1084. Persons not entitled to vote.

§ 1083. Qualifications of a voter. Every male citizen of the United States, every male person who shall have acquired the right of citizenship under or by virtue of the treaty of Queretaro, and every male naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county in which he claims his vote ninety days, and in the election precinct thirty days, and who has conformed to the law governing the registration of voters, shall be a qualified elector at any and all elections held within the county, city and county, city, town, or district, within which such elector resides. En. March 12, 1872. Am'd. 1880, 77; 1893, 124; 1899, 60.

Cal.Rep.Cit. 91, 467; 118, 394; 119, 617; 119, 618; 127, 89.

No property qualification ever to be required for any person to vote: Const. Cal., art. I, sec. 24.

Citizens, native and naturalized: Ante, sec. 51.

Residence, for voting purposes, rules for determining place of: Post, sec. 1239.

Great register of county, name enrolled on: See Registration of Electors, secs. 1094-1119.

Educational qualification, act relating to: See post, Appendix, title Elections.

§ 1084. Persons not entitled to vote. No native of China, no idiot, insane person, or person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money,

shall ever exercise the privilege of an elector. En. March 12, 1872. Am'd. 1880, 78.

Cal.Rep.Cit. 91, 467.

Constitutional basis of section: As amended 1880; proviso in Const. Cal., art. II, sec. 1.

Native of China, provisions against Chinese: Const. Cal., art. XIX.

CHAPTER III.

REGISTRATION OF ELECTORS.

§ 1094. Great register, re-registration.
§ 1095. Names of electors to be entered.
§ 1096. Substance of entry.
§ 1097. Rules governing entry.
§ 1098. Assessor's roll of electors. (Repealed.)
§ 1099. What enrollment must show. (Repealed.)
§ 1100. Duty of clerk or assessor relative to certain proofs produced. (Repealed.)
§ 1101. Assessor must make monthly returns of enrollment. (Repealed.)
§ 1102. Duty of clerk upon receipt of the return.
§ 1103. Affidavits must be filed in clerk's office for five years.
§ 1104. Persons not to be registered in different counties.
§ 1105. Cancellation of entry.
§ 1106. When entry must be canceled.
§ 1107. Clerk must give certificate of registration.
§ 1108. Persons refused registration may proceed by action.
§ 1109. Action to have registration canceled.
§ 1110. Parties to such actions.
§ 1111. Same.
§ 1112. Costs not to be recovered against the clerk, except.
§ 1113. Clerk to arrange affidavits of registration.
§ 1114. Names, manner of arrangement. (Repealed.)
§ 1115. Clerk to prepare index.
§ 1116. Printed copies, how distributed.
§ 1117. Certified copy prima facie evidence.
§ 1118. Primary elections.
§ 1119. Primary elections.

§ 1094. Great register, re-registration. A register, in which shall be entered the names of the qualified electors of each of the counties of the state, shall be kept at the office of the county clerk of each county, and in each of the cities and counties of the state such a register shall be kept in the office of the person charged with the registration of voters of such city and county. There shall be, in each even-numbered year, in each of the counties of the state, a new and complete registration of the voters of such counties, and cities and counties, who are entitled thereto. Such registration shall begin on the first day of January of such years, and shall be in progress at all times except during the forty days immediately preceding any

election, when it shall cease as to electors residing in the territory within which such election is to be held; but transfers may be made from one precinct or ward to another in the same county, or city and county, at any time except within twenty-five days immediately preceding any such election. The board having charge and control of elections in the several counties and cities and counties, may provide by resolution, for the registration of voters in their respective precincts, by the officer charged with the registration of voters. Upon the written request of the officer charged with the registration of voters, every landlord or keeper of premises where lodgers abide shall furnish said officer a list of all lodgers occupying rooms or sleeping apartments or beds in the premises under his control. Such list shall be furnished upon blanks provided by said officer. Any landlord or keeper of premises where lodgers abide, who neglects or refuses to comply promptly with the provisions of this section shall be guilty of misdemeanor. Any voter registered in premises in which the landlord or keeper neglects or refuses to comply with this act shall be cited to appear before the election commissioners within five days in order to verify his right to vote. It shall be considered as a proper citation to such voter if the citation is addressed to the name of the party registered, the number of room and place of registration; and if the party cited does not appear, in answer to the citation, at the time appointed, his name shall be stricken from the register of voters. The landlord or keeper of premises from which the voter is registered shall also be cited to appear at the same time and place at which the citation of his alleged lodger is returnable. En. March 12, 1872. Am'd. 1877-8, 27; 1889, 424; 1895, 229; 1899, 60.

Cal.Rep.Cit. 56, 70; 56, 72; 56, 73; 96, 366; 96, 369; 119, 619; 127, 88.

§ 1095. Names of electors to be entered. In the register of voters the clerk must, as hereinafter provided, enter the names of the qualified electors of the county, and the provisions of section one thousand and ninety-six of this code are hereby declared to be mandatory. Any officer charged with the registration of voters who neglects or refuses to make all of the entries provided for in section one thousand and ninety-six of the Political Code, or neglects or refuses to take the oath of the voter applying

to him for registration in respect to the same, shall, upon conviction, be deemed guilty of a misdemeanor for each and every such omission. En. March 12, 1872. Am'd. 1899, 61; 1903, 257.

Qualified electors, who are: Ante, sec. 1083.

§ 1096. Substance of entry. Such entry must show:

1. The name at length.
2. The age, omitting fractions of years.
3. The occupation.
4. The height.
5. The visible marks or scars, if any, and their location.
6. The country or state of nativity.
7. The place of residence (giving ward and precinct); and, in municipal corporations, by specifying the name of the street, avenue, or other location of the dwelling of such elector, with the number of such dwelling, if the same has a number, and if not, then with such description of the place that it can be readily ascertained and identified. If the elector be not the proprietor or head of the house, then it must show that fact, and upon what floor thereof, and what room such elector occupies in such house.
8. If naturalized, the place of naturalization.
9. The date of the entry of each person.
10. The postoffice address.
11. The fact whether or not the elector desiring to be registered is able to read the constitution in the English language and to write his name, and whether or not the elector has any physical disability by reason of which he cannot mark his ballot; and if he cannot mark his ballot by reason of physical disability, then the nature of such disability must be entered. En. March 12, 1872. Am'd. 1891, 281; 1895, 230; 1899, 61.

§ 1097. Rules governing entry. No person's name must be entered by the clerk unless:

1. Upon the production and filing of a certified copy of the judgment of the superior court directing such entry to be made.
2. If a naturalized citizen, upon the production of his certificate of naturalization, which certificate must be issued ninety days prior to the succeeding election, or upon his affidavit that it is lost or out of his possession,

which affidavit must state the place of his nativity and the time and place of his naturalization, together with his affidavit that he has resided in the United States for five years, and in this state for one year next preceding the time of application, and that he would be an elector of the county at the next succeeding election; provided, however, if such naturalized citizen shall have been previously registered as a qualified elector in any of the counties, or cities and counties of this state, his name must not be entered by the clerk unless he produces a certificate of such registration, issued by the party authorized by law to issue such certificate, which certificate shall be prima facie evidence of his naturalization.

3. If born in a foreign country, upon his affidavit that he became a citizen of the United States by virtue of the naturalization of his father while he was residing in the United States, and under the age of twenty-one years, and that he is or would be an elector of the county at the next ensuing election.

4. In other cases, upon the affidavit of the party that he is or will be an elector of the county at the next succeeding election. Such affidavit must be made before a county clerk or officer charged with the registration of voters or their deputies.

5. In every case the affidavit of the party must show all the facts required to be stated in the entry on the register, except the date of the entry. En. March 12, 1872. Am'd. 1873-4, 15; 1880, 78; 1883, 284; 1899, 61.

Cal.Rep.Cit. 56, 71; 56, 72; 56, 73.

Subd. 1. Registration in another county—must be canceled: Post, sec. 1104.

Elector of the county, qualifications of electors: Ante, sec. 1083.

Subd. 2. Returns of assessor: See secs. 1098-1103.

§ 1098. Assessor's roll of electors. (Repealed.) En. March 12, 1872. Rep. 1899, 63.

§ 1099. What enrollment must show. (Repealed.) En. March 12, 1872. Rep. 1899, 63.

§ 1100. Duty of clerk or assessor relative to certain proofs produced. (Repealed.) En. March 12, 1872. Rep. 1899, 63.

§ 1101. Assessor must make monthly returns of enrollment. (Repealed.) En. March 12, 1872. Rep. 1899, 63.

§ 1102. Duty of clerk upon receipt of the return. Upon the receipt of such return, the clerk must at once enter upon the great register the names contained and the statements made in such return. En. March 12, 1872.

Cal.Rep.Cit. 129, 563.

§ 1103. Affidavits must be filed in the clerk's office for five years. The clerk must preserve all affidavits made before himself or his deputies for the purpose of procuring registration, for at least five years from the dates thereof. After said affidavits and duplicates shall have been preserved for five years, upon order of the board of supervisors, they may be destroyed. En. March 12, 1872. Am'd. 1899, 62; 1903, 257.

§ 1104. Persons not to be registered in different counties. No person must cause himself to be registered or enrolled in one county when his registration in another remains uncanceled. En. March 12, 1872.

Punishment for fraudulent registration: Pen. Code, sec. 42.

§ 1105. Cancellation of entry. There must be left opposite each name in the great register a blank for cancellation. Cancellation is made by writing in such blank the word "canceled," and a statement of the reasons therefor, and by writing in red ink across the face of the affidavit used in procuring such registration the same words as are used in making the cancellation in the great register. En. March 12, 1872. Am'd. 1899, 62.

Cal.Rep.Cit. 122, 178.

When entry canceled: Post, sec. 1106.

§ 1106. When entry must be canceled. The clerk must cancel the entry in the following cases:

1. At the request of the party registered.
2. When he knows of the death or removal of the person registered.
3. When the insanity of the person registered is legally established.
4. Upon the production of a certified copy of a judgment of the conviction of any elector of any infamous

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crime, or of the embezzlement or misappropriation of any public money, in full force against the person registered, or upon information of such conviction obtained as hereinafter provided.

5. Upon the production of a certified copy of a judgment directing the cancellation to be made.

6. Upon a certificate of the board of election of any precinct, sent up with the election returns, stating the death or removal, within their own knowledge, of the person registered.

7. When it appears by the returns made by the board and clerks of election that the respective party did not vote during the next preceding two years at any general or special election.

8. The clerk shall cancel upon the great register every name found thereon which is found upon the register of deaths, provided for in section three thousand and seventy-nine of this code.

9. Every judge before whom proceedings were had which result in any male person being declared incapable of taking care of himself and managing his property, and for whom a guardian of his person and estate is accordingly appointed, or which result in such person being committed to a state insane asylum as an insane person, shall file with the county clerk a certificate of that fact, and thereupon the clerk shall cancel the name of such person upon the great register, if found thereon.

10. The county clerk shall also, in the first week of September, in each year, examine the records of the courts having jurisdiction in cases of infamous crimes, and the embezzlement or misappropriation of public money within his county, and cancel upon the great register the names of all persons appearing thereon who shall have been convicted of an infamous crime, or of the embezzlement or misappropriation of public money in such court, and which conviction shall have been carried into effect. En. March 12, 1872. Am'd. 1873-4, 16; 1880, 78.

Subd. 9. Guardian and ward: Civ. Code, secs. 236-258; Code Civ. Proc., secs. 1747-1809.

Committed to insane asylum: Civ. Code, sec. 258. Guardians of insane and incompetent persons: Code Civ. Proc., secs. 1763-1767.

§ 1107. Clerk must give certificate of registration. Upon the application of the party, in person or in writing, the clerk must give him or his agent a certified copy of the entries upon the great register relating to such party. En. March 12, 1872.

Cal.Rep.Cit. 119, 619.

§ 1108. Persons refused registration may proceed by action. If the clerk refuses to enter the name of any qualified elector of the county upon the great register, such elector may proceed by action in the superior court to compel such entry. En. March 12, 1872. Am'd. 1880, 20; 1880, 79.

Rules governing entry: Ante, sec. 1097.

§ 1109. Action to have registration canceled. Any person may proceed by action in the superior court to compel the clerk to cancel any entry made on the great register illegally, or that ought to be canceled by reason of facts that have occurred subsequent to the time of such entry, but if the person whose name is sought to be canceled be not a party to the action, the court may order him to be made a party defendant. En. March 12, 1872. Am'd. 1873-4, 17; 1880, 20; 1880, 79.

Cal.Rep.Cit. 111, 7.

When entry must be canceled: Ante, sec. 1106.

Parties to civil actions: Code Civ. Proc., secs. 367-390.

§ 1110. Parties to such actions. In an action under the authority of section 1108, as many persons may join as plaintiffs as have causes of action. En. March 12, 1872.

Joinder of plaintiffs generally: Code Civ. Proc., sec. 378.

Uniting causes of action generally: Code Civ. Proc., sec. 427.

§ 1111. Same. In an action under the authority of section 1109, the clerk and as many persons as there are causes of action against may be joined as defendants. En. March 12, 1872.

Joining all parties interested as defendants, in general: Code Civ. Proc., secs. 379, 382.

§ 1112. Costs not to be recovered against clerk, except. Costs cannot be recovered against the clerk in

any action under the authority of this chapter, unless it is alleged in the complaint, and established on the trial, that the clerk knowingly and willfully violated a plain duty. En. March 12, 1872..

Costs generally: Code Civ. Proc., secs. 1021-1039.

§ 1113. Clerk to arrange affidavits of registration. Within fifteen days after the last day of registration, the clerk shall arrange the affidavits of registration for each precinct alphabetically by surnames, and number the same, beginning with one in each case, and bind the same, or cause them to be bound, into a book by fastening the left-hand edges together with a staple, wire, thread or other suitable material; he shall at the same time treat the duplicate affidavits of registration in the same manner. En. March 12, 1872. Am'd. 1873-4, 17; 1877-8, 27; 1880, 79; 1895, 231; 1899, 62.

Cal.Rep.Cit. 94, 622; 136, 276.

§ 1114. Names, manner of arrangement. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 19; 1895, 231. Rep. 1899, 63.

§ 1115. Clerk to prepare index. Within five days after the binding of the said books, the clerk shall prepare an index of each book, said index to contain the names, ages, address, and numbers as they appear in said books, and shall have at least one hundred copies of said index printed. En. March 12, 1872. Am'd. 1873-4, 19; 1875-6, 24; 1895, 231; 1899, 62. 1905 241

Cal.Rep.Cit. 101, 318; 101, 319.

§ 1116. Printed copies, how distributed. The clerk must, before the day of election, transmit and cause to be delivered to the board of election in each precinct, one of such books of affidavits of registration for their respective precinct, which shall constitute the register to be used at such election; he shall also cause to be delivered at the same time five copies of the index to said book. En. March 12, 1872. Am'd. 1873-4, 20; 1875-6, 25; 1895, 232; 1899, 62.

Cal.Rep.Cit. 101, 319.

§ 1117. Certified copy prima facie evidence. A certified copy of an uncanceled entry upon the great register is prima facie evidence that the person named in the entry

is an elector of the county. En. March 12, 1872. Am'd. 1873-4, 20.

Prima facie evidence defined: Code Civ. Proc., sec. 1833.

§ 1118. **Primary elections.** The qualifications and registration of voters at primary elections shall be subject to the same tests and governed by the same rules and regulations as are in the constitution and Political Code of this state established and prescribed for other elections; and the same officers who prepare and furnish registers for general elections, as provided for in this code, shall prepare and furnish them for use at primary elections. It shall be the duty of the proper officers to furnish the register, and supplements thereto, for use at primary elections which shall show the names of all voters entitled to vote at such elections; provided, that where a new registration pursuant to law is not completed in point of time sufficient to permit of its use at the next ensuing primary election, then the register used at the last general election in any county, or city and county, in this state, may be used at any primary election, together with supplemental registers or additions showing all additional registrations, changes and corrections made since the last general registration. En. Stats. 1899, 31.

§ 1119. **Primary elections.** All persons entitled to register or vote at any primary election in any city, county, or city and county, whose names are not upon the register, or who may be entitled to transfer their registration, shall be entitled to be registered or transferred so as to enable them to vote at such primary election, and for that purpose it shall be the duty of the officer charged with the registration of voters in each county, or city and county, to keep his office open for at least fifty days prior to the fifteen days immediately preceding such primary election. En. Stats. 1899, 32.

Cal.Rep.Cit. 80, 541.

CHAPTER IV.

ELECTION PRECINCTS.

§ 1127. Supervisors to establish election precincts.
§ 1128. Boundaries must be defined.
§ 1129. Board may alter, etc., precincts.
§ 1130. Limitations on powers given herein.
§ 1131. Board to designate place in precinct for holding election.
§ 1132. Proceedings where place not designated, etc.

§ 1127. Supervisors to establish election precincts. The board of supervisors or other board having charge and control of elections in each of the counties, and cities and counties, of this state, shall, as soon before a general election as is convenient, proceed to divide such county or city and county into election precincts, of which there shall be as many as shall be sufficient to make the number of votes polled at any one election precinct to be not more than two hundred, as nearly as can be ascertained. En. March 12, 1872. Am'd. 1887, 234; 1889, 424.

Cal.Rep.Cit. 126, 394.

§ 1128. Boundaries must be defined. In the order establishing precincts, the boundaries thereof must be defined. En. March 12, 1872.

§ 1129. Board may alter, etc., precincts. The board of supervisors or other board having charge and control of elections in each of the counties and cities and counties, of the state, may from time to time change the boundaries of, create new, or consolidate established precincts; provided, that there shall always be as many precincts as shall be sufficient to make the number of votes polled at any one precinct to be not more than two hundred as nearly as can be ascertained. En. March 12, 1872. Am'd. 1889, 424.

Cal.Rep.Cit. 126, 396; 126, 397; 133, 345.

§ 1130. Limitations on powers given herein. The following limitations are imposed upon the powers given the supervisors in this chapter:

1. No precinct must be established so as to embrace more than one township, nor in such manner that its exterior limits cross the exterior boundaries of any township, incorporated town or city, or any ward, district, or other territorial subdivision for which local officers are to

be elected, except a school or road district. En. March 12, 1872. Am'd. 1880, 80; 1899, 62.

Cal.Rep.Cit. 103, 502.

§ 1131. Board to designate place in precinct for holding election. The board of supervisors, or other board having charge and control of elections in each of the counties, and cities and counties, of the state, must, at least twenty-five days prior to an election, issue its order appointing boards of election, designating the house or place within the precinct where the election must be held, and the offices to be filled, naming and numbering in numerical order, commencing with number one, the offices to be filled, unexpired terms being designated next after the full term; but in no event shall any place be selected for holding an election that is in a saloon or other room or place where vinous, spirituous, or malt liquors are sold or dispensed, nor shall any place be selected for such purpose that is connected with a saloon or other room or place where vinous, spirituous, or malt liquors are sold or dispensed by any door, window, or other opening. En. March 12, 1872. Am'd. 1873-4, 21; 1889, 424; 1899, 133.

Cal.Rep.Cit. 86, 67.

Election proclamations.—Time and place of holding elections are of the substance of the election: Ante, sec. 1053.

§ 1132. Proceedings where place not designated, etc. If the board fail to designate the house or place for holding the election in any precinct, or, if for any reason, it cannot be held at the house or place designated by the board, the justice of the peace residing in the township in which such precinct is situated must, by an order under his hand (copies of which he must at once post in three public places in the precinct), designate the house or place, within the precinct. In case of the absence of the justice of the peace, or of his disability or refusal to perform the duties herein imposed, then a majority of the judges and inspectors of election for said precinct shall designate the place, within the precinct, for holding the election and post the notices required by this section; provided, that in cities or cities and counties which are not divided into townships for judicial purposes, a majority of the justices of the peace residing in

such city or city and county, shall discharge the duties imposed by this section. En. March 12, 1872. Am'd. 1873-4, 21; 1903, 18.

CHAPTER V.

BOARDS OF ELECTION.

§ 1142. Boards of election, how appointed.
§ 1143. Judges not to be of same political party.
§ 1144. Proceedings on failure to appoint or attend.
§ 1145. Powers of inspectors.
§ 1146. Judges and clerks may administer oaths.
§ 1147. Clerks. (Repealed.)
§ 1148. Board and clerks to be sworn.
§ 1149. Board to post copies of great register.
§ 1150. Copies not to be torn or defaced.

§ 1142. Boards of election, how appointed. When an election is ordered, the board of supervisors, or other board having charge and control of elections in each of the counties, and cities and counties, of the state must appoint officers of election board from the registered electors of each precinct whose names appear upon the last assessment roll of the county or city and county to serve as election officers only in the election precinct in which they are registered and actually reside to constitute the election board for such precinct, which shall consist of two inspectors, two judges, and two clerks; the inspectors, judges and clerks to be apportioned equally between the two political parties which, respectively, cast the highest and next highest number of votes for governor at the last general election; the inspectors and judges so appointed shall constitute a board of election for such precinct. And such board of supervisors or other board having charge of elections must publish the names of such electors who constitute the board of elections for each election precinct, in some newspaper published in the county or city and county where the election is to be held for five successive days at least one week before the day such election is to be held; or in a weekly paper published in the county, for two successive weeks prior to the election. Such board of election shall canvass the votes for such precinct, and must be present at the closing of the polls. The members of said board shall relieve each other in the duties of canvassing the ballots, which may be conducted by at least half of the whole number; but the final certificate shall be signed by a

majority of the whole. No person shall be eligible to act as an officer of election at any precinct who has been employed in any official capacity in the county, or city and county, in the state, within ninety days next preceding any election. No person shall be eligible to act as a member of any election board, or as a clerk upon such board, who cannot read and write the English language. Any person acting as a member of any election board, or as a clerk upon such board, who cannot read and write the English language, and any person who refuses to act upon such board, or as a clerk thereof, after proper notification of his appointment, who is otherwise eligible, unless good and sufficient cause for such refusal is shown to the election board or to the board of supervisors, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of five hundred dollars, and upon failure to pay said fine shall be imprisoned in the county jail of such county, or city and county, for the period of one day for each one dollar of said fine. En. March 12, 1872. Am'd. 1873-4, 21; 1889, 425; 1895, 298; 1899, 85; 1903, 133.

Cal.Rep.Cit. 86, 65; 86, 66; 86, 67; 86, 68; 86, 69; 116, 290.

§ 1143. Judges not to be of same political party. The judges appointed must not be members of the same political party. En. March 12, 1872.

§ 1144. Proceedings on failure to appoint or attend. If the board of supervisors fail to appoint the board of election, or the members appointed do not attend at the opening of the polls on the morning of the election, the electors of the precinct present at that hour may appoint the board, or supply the place of an absent member thereof. En. March 12, 1872. Am'd. 1873-4, 22.

§ 1145. Powers of inspectors. The inspector may:

1. Administer all oaths required in the progress of an election.

2. Appoint judges and clerks if, during the progress of an election, any judge or clerk ceases to act. En. March 12, 1872. Am'd. 1889, 425.

§ 1146. Judges and clerks may administer oaths. Any member of the board, or either clerk thereof, may admin-

ister and certify oaths required to be administered during progress of an election. En. March 12, 1872.

§ 1147. Clerks. (Repealed.) En. March 12, 1872. Am'd. 1880, 80. Rep. 1889, 425.

§ 1148. Board and clerks to be sworn. Before opening the polls, each member of the board and each clerk must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the township may administer and certify such oath. En. March 12, 1872.

§ 1149. Board to post copies of great register. Before opening the polls, the board must post in some separate convenient places, easy of access, not less than four printed copies of the great register of the county, as last printed, except in the city and county of San Francisco, wherein not less than four printed copies of the register of the ward shall be so posted. En. March 12, 1872. Am'd. 1873-4, 22. 1905- 195-

§ 1150. Copies not to be torn or defaced. The copies so posted must be maintained during the whole time of voting, and must not in any manner be torn or defaced. En. March 12, 1872.

CHAPTER VI.

OPENING AND CLOSING OF THE POLLS.

§ 1160. Time of opening and closing the polls.
§ 1161. Recess. (Repealed.)
§ 1162. Ballot-box to be exhibited.
§ 1163. Proclamation at opening the polls.
§ 1164. Proclamation at closing the polls.

§ 1160. Time of opening and closing the polls. The polls must be opened at six o'clock of the morning of the day of election, and must be kept open until five o'clock in the afternoon of the same day, when the polls shall be closed. En. March 12, 1872. Am'd. 1873-4, 22; 1875-6, 25; 1887, 149; 1889, 425; 1899, 134.

Cal.Rep.Cit. 52, 73; 52, 621; 103, 111; 121, 480; 135, 454.

§ 1161. Recess. (Repealed.) En. March 12, 1872. Rep. 1873-4, 23.

§ 1162. Ballot-box to be exhibited. Before receiving any ballots the board must, in the presence of any persons assembled at the polling place, open and exhibit and close the ballot-box; and thereafter it must not be removed from the polling place or presence of the bystanders until all the ballots are counted, nor must it be opened until after the polls are finally closed. En. March 12, 1872.

Cal.Rep.Cit. 108, 111.

§ 1163. Proclamation at opening the polls. Before the board receive any ballots, they must cause it to be proclaimed aloud at the place of election that the polls are open. En. March 12, 1872.

§ 1164. Proclamation at closing the polls. When the polls are closed, that fact must be proclaimed aloud at the place of election; and after such proclamation, no ballots must be received; provided, that all electors, who are within the election booth and who have not cast their ballot, shall be entitled to receive, mark and deposit their ballot. En. March 12, 1872. Am'd. 1899, 134.

CHAPTER VII.

POLL LISTS.

§ 1174. Form of poll and tally lists.
§ 1175. Want of form not to vitiate.

§ 1174. Form of poll and tally lists. The following is the form of poll lists and tally lists to be kept by boards and clerks of election. En. March 12, 1872. Am'd. 1873-4, 23.

POLL LISTS.

Of the election held in the precinct of ———, in the county of ———, on the ——— day of ———, in the year A. D. one thousand eight hundred and ———. A. B., C. D., and E. F., judges, and G. H. and J. K., clerks of said election, were respectively sworn (or affirmed), as the law directs, previous to their entering on the duties of their respective offices.

NUMBER AND NAME OF ELECTORS VOTING.

No.	Name.	No.	Name.
1	A. B.	3	E. F.
2	C. D.	4	G. H.

We hereby certify that the numbers of electors voting at this election amounts to ———.

Attest:

G. H.,
J. K.,
Clerks.

A. B.,
C. D.,
E. F.,
Board of election.

TALLY LISTS.

Names of persons voted for, and for what office, containing the number of votes given for each candidate:

Governor.	Representative in Congress.	Members of the Legislature.	
		Senate.	Assembly.

We hereby certify that A. B. had ——— votes for governor, and C. D. had ——— votes for governor; that E. F. had ——— votes for representative in congress, etc.

G. H.,
J. K.,
Clerks.

A. B.,
C. D.,
E. F.,
Board of election.

§ 1175. Want of form not to vitiate. No list, tally, paper, or certificate returned from any election, must be set aside or rejected for want of form, nor on account of

its not being strictly in accordance with the directions of this title, if it can be satisfactorily understood. Em. March 12, 1872.

Cal.Rep.Cit. 77, 182.

CHAPTER VIII.

ELECTION TICKETS AND BALLOTS.

§ 1185. Printing of ballots.
§ 1186. Nomination of candidates.
§ 1187. Nominations, certifying of.
§ 1188. Nominations other than by conventions.
§ 1189. Certificates of nomination, filing of.
§ 1190. Nominations, limitation upon.
§ 1191. Certificates of nomination, preservation of.
§ 1192. Certificates of nomination, time of filing—Vacancies.
§ 1193. Certifying names of candidates.
§ 1194. Nominations sent to county committees—Sample ballots.
§ 1195. Constitutional amendments, how submitted.
§ 1196. Providing ballots.
§ 1197. Ballot law.
§ 1198. Books and records of ballots.
§ 1199. Number of ballots.
§ 1200. Error or omission in name of candidate.
§ 1201. Delivering ballots.
§ 1202. Ballot clerks.
§ 1203. Ballot boxes—Booths for voters.
§ 1204. Manner of voting.
§ 1205. Idem.
§ 1206. Occupancy of booths.
§ 1207. Spoiled or unused ballots.
§ 1208. Illiterate or helpless voters.
§ 1209. Removal of slip from ballot.
§ 1210. Sample ballots.
§ 1211. Canvassing of votes—Marked or spoiled ballots.
§ 1212. Time for voting.
§ 1213. Certificate of nomination, destruction of or false making of.
§ 1214. Destruction of supplies.
§ 1215. Disclosing name of candidate—Electioneering, etc.
§ 1216. Registrar of voters.

§ 1185. Printing of ballots. All ballots cast in elections for public officers within this state shall be printed and distributed at public expense, as hereinafter provided. The printing of general tickets and cards of instruction to electors of each county, and the delivery of the same to the election officers, shall be a county charge, the payment of which shall be provided for in the same manner as the payment of other county expenses; and the printing and delivering of "municipal tickets," and also in case of separate elections for city, city and county, or town officers, the printing and delivering of cards of instruction, shall be a charge upon the respective city, city and county, or town in which such "municipal tickets"

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and cards of instruction are to be used, the payment of which shall be provided for in the same manner as the payment of other city, city and county, or town expenses. En. March 12, 1872. Am'd. 1891, 165.

Cal.Rep.Cit. 122, 191.

§ 1186. Nomination of candidates. Any convention as hereinafter defined may make nominations of candidates for public office, including electors of president and vice-president of the United States, to be filled by election within the state. A convention within the meaning of this chapter is an organized assemblage of delegates representing a political party or organization. If such convention be assembled to present candidates for public office to be elected within territory or political division in the whole of which the provisions of sections thirteen hundred and fifty-seven to thirteen hundred and seventy-five, both inclusive, of this code are mandatory or were in force and effect at the time of the election of delegates thereto, then and in such event all the delegates acting therein must have been chosen at a primary election held under the provisions of said sections of this code. If such convention be assembled to present candidates for public office to be elected within territory in a portion of which the said sections of this code are mandatory or in force and effect, and in a portion of which said sections are not in force or effect, then and in such event, the delegates acting in such convention representing therein territory or a political division where such said sections are in force and effect, must have been chosen at a primary election held under the provisions thereof. If such convention be assembled to present candidates for public office to be elected within territory or a political division in no portion of which said sections of this code are mandatory or in force and effect, then and in such event the political party which such organized assemblage of delegates represents, must have at the last election before the holding of such convention polled at least three per cent of the entire vote of the state, or of the county, city and county, district or other political division for which nominations are to be made; provided, that in any political division of this state wherein no general election shall have been held after its organization, a convention as last above referred to, of any political party polling at

least three per cent of the votes cast in the precincts composing said political division, shall have the same power, and its nominations the same effect, as though such political division had been organized before the next preceding general election. Any conventions as herein defined may, in addition to making nominations of candidates for public office, appoint or elect a governing committee for the political party which the delegates in such convention represent, for the territory which is thus represented, which committee shall serve for the next ensuing two years, and until the next biennial convention of the party which it represents has organized, but no longer; provided, that in years when a state convention assembles to select delegates to a national convention to nominate a candidate for president and for vice-president of the United States, such state convention shall have the power to choose a committee or governing body to represent the party in the territory which such convention represents, which committee or governing body shall hold and exercise its power until the next state convention to nominate a governor and other state officers shall assemble and select its successors. Whenever there shall be in any political subdivision of the state more than one body claiming to represent a certain political party or organization in such territory, if such political party have a state committee, such state committee, or its executive committee, if it have one, and has delegated such power to it, may determine which of such bodies represents such political party in such territory, and such decision shall be final and all officers shall be bound thereby. The decision shall be in writing, and shall name the chairman and secretary of the political committee for such political subdivision which it recognizes, and shall be attested by the secretary of the committee making the decision, and a duplicate must be filed with the election commissioners of such political subdivision or its clerk, secretary, or registrar of voters. En. March 12, 1872. Am'd. 1891, 165; 1899, 58; 1901, 590.

Cal.Rep.Cit. 96, 372; 114, 486.

§ 1187. Nominations, certifying of. All nominations made by any such convention shall be certified as follows: The certificate of nomination must be in writing and shall contain the name of each person nominated, his residence

and the office for which he is nominated, and shall designate the party or principle which such convention represents. It shall be signed by the chairman and secretary of such convention, who shall add to their signatures their respective places of residence, and make oath before an officer authorized to administer the same that the matter stated in such certificate is true to the best of their knowledge and belief, and a certificate of the oath shall be annexed to the certificate of nomination. The nominees may all be nominated by one certificate or by separate certificates, and where nominees of a district, or supervisoral convention are reported to a state or local convention in which the delegates to such district or supervisoral conventions form a portion of the delegates composing such state or local convention, all such nominees may be included in one certificate of nomination with the nominees of such state or local convention, it being specified for what districts such district nominations are made, and all such nominations may be certified as above by the chairman and secretary of the state or local convention. If the chairman and secretary of any convention shall not deposit with the secretary of the political party committee representing the party in the territory for which such convention was held, the proper certificate or certificates of nomination of the nominees of such convention verified as herein required in due form for filing, on or before the fifth day preceding the latest day provided by law for filing such certificate or certificates of nomination, then such certificate or certificates of nomination may be made and verified by the chairman and secretary of the political party which such convention represented, acting in and for the territory which such convention represented, in the manner and form hereinbefore provided, and upon an indorsement being made upon such certificate or certificates of nomination last mentioned by the secretary of such committee, to the effect that the chairman and secretary of the proper convention did not deposit with said secretary a certificate or certificates of nomination as required by this section, the secretary of state, clerk, registrar of voters, or proper officer with whom such certificate or certificates are required by law to be filed, must receive and file such certificate or certificates so made by the chairman and secretary of such

committee, and the same shall have the same force and effect as if made by the chairman and secretary of such convention; provided, such chairman and secretary may themselves file or cause to be filed such certificate within the time allowed by law; and the same, when so filed, if legal in form and substance, shall be the only lawful certificate of such nominations made by such convention. The verified certificate of nominations made by a state convention and the districts thereof, when made pursuant to this section by such officers of such respective political committees, shall be in form substantially as follows:

If a statement of the nominations made by a state convention and the district conventions thereof:

To the Secretary of State (or other proper officer):

The undersigned, the chairman and secretary, respectively, of the (giving the party designation) state committee of California, hereby certify that at a meeting of the (giving the party designation) state convention, held at the city of ——— on the ——— days of ———, nineteen hundred and ———, the following nominations of candidates for public offices to be voted for at the next ensuing general election were duly and regularly made by said state convention and the district conventions thereof:

Office.	*Name of Nominee.*	*Residence.*
For Governor.	.....	.....
(Etc.)		
For Members of the House of Representatives—		
First District.	.....	.....
(Etc.)		
For Members of State Board of Equalization—		
First District.	.....	.....
(Etc.)		
For Railroad Commissioners—		
First District.	.....	.....
(Etc.)		

Office.	*Name of Nominee.*	*Residence.*
For Members of State Senate—		
Second District.	.....	.....
Fourth District.	.....	.....
(Etc.)		
For Members of State Assembly—		
First District.	.....	.....
Second District.	.....	.....

.....,
Chairman (insert name of party) State Committee of California.

.....,
Secretary (insert name of party) State Committee of California.

Subscribed and sworn to before me this ——— day of ———, nineteen hundred and ———.

(Seal.) .....,
Notary Public.

If a statement of the nominations made by a county convention and the district conventions thereof:

To the Secretary of State:

(or)

To the County Clerk (or other proper officer) of ———:

The undersigned, the chairman and secretary, respectively, of the (insert name of party) county committee of the county (or city and county) of ——— hereby certify that at a meeting of the (insert name of party) county convention of said county (or city and county) held on the ——— days of ———, nineteen hundred and ———, the following nominations of candidates for public offices to be voted for at the next ensuing general election therein were duly and regularly made by said county convention and the district conventions thereof:

Office.	*Name of Nominee.*	*Residence.*
.....	.....	.....

.....,
Chairman (insert name of party) County Committee of ———.

.....,
Secretary (insert name of party) County Committee of ———.

Subscribed and sworn to before me this ——— day of ———, nineteen hundred and ———.

(Seal.) .....,

Notary Public.

If a statement of the nominations made by a local (or municipal) convention and the district conventions thereof: To the County Clerk (or other proper officer) of ———:

The undersigned, the chairman and secretary, respectively, of the (insert name of party, county or local) committee of the (city and county, city or town) of ——— hereby certify that at a meeting of the (insert name of party, local or municipal) convention of said (city and county, city or town), held on the ——— days of ———, nineteen hundred and ———, the following nominations of candidates for public offices to be voted for at the next ensuing local (or municipal) election held therein, were duly and regularly made by said local (or municipal) convention and the district conventions thereof:

Office	*Name of Nominee.*	*Residence.*
.....	.....	.....

.....,

Chairman (insert name of party, county or local) Committee of ———.

.....,

Secretary (insert name of party, county or local) Committee of ———.

Subscribed and sworn to before me this ——— day of ———, nineteen hundred and ———.

(Seal.) .....,

Notary Public.

If the certificates of nomination are made by the chairman and secretary of any such convention they shall be in substantially the same form as the foregoing, signed and verified by the chairman and secretary of the convention instead of such officers of such political committees. Em. March 12, 1872. Am'd. 1891, 166; 1901, 591.

Cal.Rep.Cit. 96, 372; 114, 486.

§ 1188. Nominations other than by conventions. A candidate for public office may be nominated, otherwise than by a convention, in the manner following: A certificate

of nomination containing the name of the candidate to be nominated, with the other information required to be given in the certificates provided for in section eleven hundred and eighty-seven of this code, shall be signed by electors residing within the district, or political division for which candidates are to be presented, equal in number to at least three per cent of the entire vote cast at the last preceding election in the state, district, or political division for which the nomination is to be made. Said petitioners may also designate any number of persons, not less than seven nor more than twenty-five, each and all of whom shall be signers to said petition to constitute a committee representing the signers of said certificate, collectively, as a political party by any name selected and adopted by them in said certificate of nomination; provided, said name is not the same or so similar to that of any existing party as to mislead voters. The said committee so designated shall constitute the governing body or committee of said party. Said signatures need not be appended to one paper, but each signer shall add to his signature his place of residence, giving street and number, where such designation by street and number can be given. One of the signers of each such paper shall swear that the statements therein made are true, and that each signature to such paper appended is the genuine signature of the person whose name purports to be thereto subscribed. Any person signing to such certificate of nomination any name but his own, or any person making a false oath to such certificate of nomination, shall be punished by imprisonment in the state prison not exceeding five years. No voter who votes at any primary election of delegates to any convention shall sign any petition in favor of recommending for nomination any person as an independent candidate for any office for which candidates are to be or shall have been nominated at such convention. The clerk or officer with whom any petition of any independent candidate is filed, is authorized and directed to strike out or disregard the name or names of any electors, who, upon examination of the voting register, or otherwise, may be found to have signed such petition in violation of the provisions herein. En. March 12, 1872. Am'd. 1891, 166; 1893, 303; 1899, 32; 1901, 594.

Cal.Rep.Cit. 129, 328; 131, 267.

§ 1189. Certificates of nomination, filing of. Certificates of nomination shall be filed with the secretary of state for the nomination of candidates for offices to be filled by the electors of the entire state, or for members of the state board of equalization, state board of railroad commissioners, or house of representatives. Certificates of nomination shall be filed with the clerk or secretary of the legislative body of any incorporated city or town for the nomination of any candidate for an office under the government of any city or town, to be filled by the electors of such city or town. For all other nominations to public offices, certificates of nomination shall be filed with the clerks of the respective counties wherein the offices are to be filled by the electors; and where the district or political division embraces more than one county, such certificate must be filed with the clerk of the county in which the candidate resides; and the name of each such candidate, as specified in the certificate of nomination, shall be certified by said county clerk to the county clerks of the other counties within the district or political division not less than fifteen days before the day of election. En. March 12, 1872. Am'd. 1891, 167.

Cal.Rep.Cit. 137, 480.

§ 1190. Nominations, limitation upon. No certificate of nomination shall contain the name of more than one candidate for each office to be filled. No person shall join in nominating, under the provisions of this code, more than one nominee for each office to be filled; and no person who has voted in a convention for or against a candidate for any office shall join in nominating, in any manner, any other nominee for that office, and no person shall accept a nomination to more than one office. En. March 12, 1872. Am'd. 1885, 114; 1891, 167.

§ 1191. Certificates of nomination, preservation of. The secretary of state shall preserve in his office for the period of two years all certificates of nomination filed therein under the provisions of this code; and each county clerk shall preserve in his office for a like period all certificates of nomination filed therein under the provisions of this code; and each clerk or secretary of the legislative body of any incorporated city or town shall, for a like period, preserve in his office all certificates of nomination filed

therein under the provisions of this code. En. March 12, 1872. Am'd. 1873-4, 24; 1889, 210; 1891, 167.

Cal.Rep.Cit. 46, 404; 46, 405; 67, 498; 92, 136; 92, 137.

§ 1192. Certificate of nomination, time of filing—Vacancies. Certificates of nomination required to be filed with the secretary of state shall be filed not more than sixty days and not less than forty days before the day fixed by law for the election of the persons in nomination, when the nomination is made by a convention, and not more than sixty days and not less than thirty days before the day of election, when the nomination is made by electors, as provided in section one thousand one hundred and eighty-eight of this code. Certificates of nomination required to be filed with the county clerks, or with the clerk or secretary of the legislative body of any city or town, shall be filed not more than fifty nor less than thirty days before the day of election, when the nomination is made by a convention, and not more than fifty days nor less than twenty days before the day of election, when the nomination is made by electors. The county clerk of the county wherein certificates of nominations for senators and members of the assembly and judges of the superior court are required to be filed, must, within five days after the filing of such certificates, make out a copy of such certificate of nomination, certify the same under his official seal, and forward such copy or copies to the secretary of state. Should a vacancy in the list of nominees of a convention occur, such vacancy may be filled by the convention; or if it has delegated to a committee the power to fill vacancies, such committee may, upon the occurring of such vacancy, proceed to fill the same; provided, that no nomination shall be made or certified at a period before the day of election less than the minimum number of days provided for filing certificates of nomination made under this code. The chairman and secretary of the convention, or of such committee, shall thereupon make and file with the proper officer a certificate setting forth the cause of the vacancy, the name of the person nominated, the office for which he was nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and such further information as is required to be given in an original certificate of nomination.

The county clerk of the county wherein such certificate to fill a vacancy in the list of nominees of a convention for senators, or members of the assembly, or judges of the superior court, must, within five days after the filing of such certificate, make out a copy of such certificate, certify the same under his official seal, and forward such copy or copies to the secretary of state.

When a certificate to fill any vacancy shall be filed with the secretary of state, he shall, in certifying the nomination to the various county clerks, insert the name of the person who has been thus nominated to fill a vacancy in the place of that of the original nominee. Any person whose name has been presented as a candidate may, at least five days before the making of the publication of the nominations prescribed in this section, cause his name to be withdrawn from nomination, by filing in the office where the original certificate of nomination was filed his request therefor, in writing, signed by him and acknowledged before the county clerk of the county in which he resides; and no name so withdrawn shall be printed on the ballot. Whenever any certificate of nomination is presented for filing to any officer authorized to file the same, such officer shall forthwith, upon receipt of the same and before filing, examine the same, and if there is any defect, omission, or reason why the same should not be filed, such officer shall then and there forthwith designate, in writing, the defect, omission, or reason why such certificate cannot be filed, and return the said certificate to the person presenting the same, with such written designation of defect, omission, or reason for not filing the same; and after the filing of any certificate of nomination, no officer required by law to transmit any nomination, or to make up or print any ballot, shall fail or omit to transmit such nomination, or omit to print the name of any nominee or candidate named in any certificate of nomination which has been filed; and unless a certificate of nomination is returned as herein required, the officer to whom the same is properly presented shall file the same as soon as he shall receive and examine the same as herein required, and must file it as of the day it is presented. En. March 12, 1872. Am'd. 1891, 167; 1895, 299; 1901, 601.

Cal.Rep.Cit. 114, 483; 137, 480.

§ 1193. Certifying names of candidates. Not less than twenty-five days before an election to fill any public office, the secretary of state shall certify to the county clerk of each county within which any of the electors may by law vote for candidates for such office, the names of each person nominated for such office, as specified in the certificate of nomination filed with the secretary of state. En. March 12, 1872. Am'd. 1891, 168.

§ 1194. Nominations sent to county committees—Sample ballots. At least fifteen days before an election to fill any public office, the county clerk of each county shall cause to be sent to the chairman of the county committee of each organized political party of each county the nominations to office certified to him by the secretary of state, and also all those filed with the county clerk. In all counties where a new registration shall take place preceding the next ensuing election, the county clerk shall cause the name of each voter, as enrolled, to be addressed upon an envelope, and also the number of the residence of said voter, or the correct postoffice address of said voter, as the same is written on said register, and which name and address shall be written on the envelope at the time that each voter is duly registered thereon. All of said envelopes shall be securely kept by the said county clerk, and, ten days before election to fill any public office, he shall cause to be folded and placed in said envelope, for mailing, sample ballots containing the nominations to office certified to him by the secretary of state, and also all those filed with the county clerk, each of which shall be inclosed in said envelope, and cause the same to be mailed in the United States postoffice as printed matter, for delivery to each of said voters. The mailing of all of said envelopes containing sample ballots, as aforesaid, shall commence at least ten days before the time of election to fill any public office, as aforesaid, and continue so that all of said envelopes containing said sample ballots shall have been mailed at least three whole days before the day of election to fill any public office, as above provided. If a new registration does not take place in any county preceding the next ensuing election, the county clerk shall cause envelopes to be addressed to each voter, together with the number of the residence of said voter, or correct postoffice address, as the same appears

upon the register corrected at that time, as the law provides, and cause to be inclosed therein the nominations to office certified to him, as aforesaid, and cause the same to be mailed in the manner and within the time as above provided. The clerk or the secretary of the legislative body of any incorporated city or town with whom the names of any candidates have been filed shall mail, in the United States postoffice, envelopes addressed to each voter, together with the sample ballots inclosed therein, the list of nominations filed with him, in the same manner as the lists of nominations mailed by the county clerk, as provided in this section. En. March 12, 1872. Am'd. 1891, 168; 1893, 304.

Cal.Rep.Cit. 103, 539.

§ 1195. Constitutional amendments, how submitted. Whenever the legislature shall propose any amendment to the constitution of this state, which amendment shall have been passed in the manner required by section one of article eighteen of the constitution, or whenever said legislature shall submit any proposition to a vote of the qualified electors of the state, the secretary of state shall duly, and not less than twenty-five days before election, certify the same to the clerk of each county of the state; shall cause to be printed at the state printing office, in convenient form, one and one half times as many copies of such amendment or proposition as there are registered voters in the state, and at least thirty days before any election at which such amendment or proposition is to be voted on, shall furnish each county clerk in the state with one and one half times as many such copies as there are registered voters in his county. The clerk of each county shall thereafter cause to be mailed to each voter a copy of said constitutional amendment or other proposition at the same time, and in the same manner, and in the same envelope provided for in section one thousand one hundred and ninety-four of this code, and no other publication thereof shall be necessary or authorized. En. March 12, 1872. Am'd. 1891, 169; 1899, 27.

Cal.Rep.Cit. 180, 92; 180, 93.

There was also passed at the same session and on the same day an act to provide for the submission of constitutional amendments to the electors: See Stats. 1899, p. 24. This act was declared unconstitutional in so far as it

purported to enact a new section: People v. Curry, 130 Cal. 82.

§ 1196. Providing ballots. Except as in this code otherwise provided, it shall be the duty of the county clerk of each county to provide printed ballots for every election of public officers, except elections for city or town officers, in which electors, or any of the electors, within the county participate, and to cause to be printed in the appropriate ballot the name of every candidate whose name has been certified to or filed with the county clerk, in the manner provided for in this code. Ballots other than those printed by the respective county clerks, or the clerk or secretary of the legislative body of any incorporated city or town, according to the provisions of this code, shall not be cast nor counted at any election. It shall be the duty of the county clerk of any consolidated city and county to provide separate ballots for every election for city and county officers in which the electors, or any of the electors, of such city or county participate, and to cause to be printed in such separate ballots the name of every candidate for a city and county office whose name has been filed with the proper officer in the manner provided in this code. It shall be the duty of the clerk or secretary of the legislative body of any incorporated city or town to provide separate ballots for every election for city or town officers in which the electors, or any of the electors, of such city or town participate, and to cause to be printed in such separate ballots the name of every candidate whose name has been filed with such clerk or secretary in the manner provided for in this code. All ballots shall be of the necessary size and shape to contain in parallel columns the names of all the candidates nominated by each of the several political parties or independent bodies, together with the necessary blank column hereinafter provided for, and shall be printed on tinted paper furnished by the secretary of state. It shall be the duty of the secretary of state to obtain, and keep on hand, a sufficient supply of paper for ballots, and to furnish the same, in quantities ordered, to any county clerk, or clerk or secretary of the legislative body of any incorporated city or town, upon payment by them of the cost of such paper. Such paper shall be watermarked with a design to be furnished by the secretary of state, in such manner that the said water-

mark shall be plainly discernible on the outside of such ballot when folded according to law. Such design shall be kept secret from all persons not engaged in the preparation, printing, or distribution of the paper or ballots, until the day of election. Such design shall be changed for each general election, and the same design shall not be used again at any general election within the space of fourteen years; but at any special or separate local election, paper marked with the design used at the previous election may be used. Nothing in this code contained shall prevent any voter from writing upon his ballot the name of any person for whom he desires to vote for any office, and such vote shall be counted the same as if printed upon the ballot, and marked as voted for. En. March 12, 1872. Am'd. 1891, 169; 1899, 134.

Number of ballots: See post, sec. 1199.

§ 1197. **Ballot law.** 1. There shall be provided at each polling place, at each election at which public officers are voted for, but one form of ballot for all the candidates for public office, and every ballot shall contain the names of all the candidates whose nominations for any office specified on the ballot have been duly made and not withdrawn, as provided in this code, together with the title of the office, arranged in tickets under the titles of the respective political parties as certified in the certificates of nomination. The arrangement of the ballot shall, in general, conform as nearly as practicable to the plan hereinafter given.

2. The list of candidates of the several parties shall be printed in parallel columns, each column to be headed by the party name, in such order as the secretary of state may direct, precedence, however, being given to the party which polled the highest number of votes for governor at the last preceding general election for such officer, and so on. The number of such columns shall exceed by one the number of separate tickets of candidates to be voted for at the polling place for which the ballot is provided, except as otherwise provided in this section. The party name shall be printed in display, the name or designation of the office in brevier lower case, and the name of the candidate therefor in brevier capital type. The title of the office, together with the name of the candidate therefor, shall be printed in a space one half inch in depth,

and at least two inches in width, defined by light, horizontal ruled lines, with a blank space on the right thereof one half of an inch wide, inclosed by heavier dark lines, which space (called the voting square), shall be of the same depth as the space containing the title of the office and the name of the candidate; provided, however, that when two or more persons are voted for, for offices having the same title, for the same term, on the same party ticket, as, for instance, presidential electors, the title of the office shall be printed in each space, with the name of each candidate for such office, and after such title there shall be stated the number of persons to be voted for for such offices by words in parenthesis in nonpareil type, thus: (vote for two), giving the correct number to be voted for, as the case may be.

3. On the right of each ballot shall be a column in which shall be printed in spaces as above provided, only the titles of the offices for which candidates may be voted for by the electors at the polling places for which such ballot is printed. Such column is designated as the "blank column," and in such column the voting squares shall be omitted, but in all other respects such blank column shall conform to the political party columns on such ballot. In the space of such column above the heavy ruled line at the top thereof shall be printed in eighteen-point gothic capitals the words "blank column," and below such words shall be printed in brevier capital type the following: "The elector may write in the column below, under the title of the office, the name of any person whose name is not printed upon the ballot, for whom he desires to vote. Do not use a voting stamp, or make any cross in this column." The heading of each party or independent ticket shall be separated from the rest of the ticket by a heavy printed line.

4. Immediately under the heading of each party or independent ticket and above the heavy printed line shall be inserted a printed circle at least three fourths of an inch in diameter, and of uniform size and appearance for all tickets, which shall be called the party voting circle, in which circle a stamp may be made by those who wish to vote for such party ticket. Opposite such circle and in the same space shall be printed the following words in lower case brevier type: "To vote a straight ticket stamp

a cross (X) within this circle." The space occupied by such circle and words shall not exceed two inches in length.

5. In the case of nominations provided for in section eleven hundred and eighty-eight, herein referred to as independent tickets, the ballot shall be so arranged that at the right of the last column for nominations made pursuant to section eleven hundred and eighty-seven the several tickets of the names of the candidates nominated under section eleven hundred and eighty-eight shall be printed in one or more columns according to the space required, having above each of the tickets the political or other name selected to designate such independent nominations and a circle as aforesaid to provide the party voting circle for such independent nominations. The independent tickets occupying the same column shall be separated from each other by a solid black line one eighth of an inch wide. At the top of such column, or columns, for independent nominations, shall be printed in type known as eighteen-point gothic capitals, the words "Independent Nominations." The independent nominations shall be placed in said column in sequence, preference being given to the office of the head of the ticket and so on; one column must be filled before another is provided.

6. Each column upon the ballot shall be bordered on either side by a broad solid printed line one eighth of an inch wide, and the edge of the ballot on the left-hand side shall be trimmed off up to the border or solid line described, and on the right-hand side shall be perforated along the border or solid line above described. The ballot shall be so printed as to give each voter a clear opportunity to designate, by stamping a cross (X) in a blank inclosed space, heretofore designated as the voting square, on the right of and after the name of each candidate whose name is printed on the ballot, his choice of particular candidates. The ballot shall be printed on the same leaf with a stub and separated therefrom by a perforated line across the top of the ballot. On each ballot a perforated line shall extend from top to bottom, along the border or solid line hereinbefore described, one half inch from the right-hand side of such ballot, and upon the half-inch strip thus formed there shall be no printing except the number of the ballot, which shall be upon the back of such strip, in such position

that it shall appear on the outside when the ballot is folded. The number on each ballot shall be the same as that on the corresponding stub, and the ballots and stubs shall be numbered consecutively in each county. All ballots printed by county clerks or registrars of voters other than the separate ballots containing the names only of candidates for city and county offices, printed by the county clerks, or registrars of voters of consolidated cities and counties, shall have printed on the back, below the stub, and immediately at the left of the center of the ballot, in eighteen-point gothic capitals, the words "General Ticket," and, underneath, the respective number of congressional, senatorial, and assembly districts in which each ballot is to be voted, and all ballots printed by county clerks or registrars of voters of consolidated cities and counties containing the names of candidates for city and county officers, and also all the ballots printed by the clerk, registrar of voters, or secretary of a legislative body of any incorporated city or town, shall have printed in the same manner, on the back, the words "Municipal Ticket." All municipal tickets shall be printed on paper of a different tint from that of the general ticket. On the top of the face of the ballot the following directions shall be printed:

INSTRUCTIONS TO VOTERS:

To vote a straight ticket, stamp a cross (X) within the circle under the party heading.

To vote a split ticket, that is, for candidates of different parties, stamp a cross (X) in the voting circle at the head of your party ticket, and a cross (X) after each candidate, not on your party ticket, for whom you desire to vote, or stamp a cross (X) for each individual candidate for whom you desire to vote, and DO NOT STAMP your party voting circle.

Where two or more candidates for the same office are to be elected and you desire to vote for candidates for that office who are on your party ticket, and also for candidates for that office who are not on such ticket, stamp a cross (X) after the names of all the candidates for that office for whom you desire to vote, whether they be on your party ticket or not. Where a party has made no nomination for an office, the space for that office in the party column is omitted on this ballot.

If a party ticket does not contain the names of candidates for all offices for which the voter may vote, he may, if he vote the straight ticket of such party, vote for candidates for such offices so omitted by stamping a cross (X) in the voting square opposite the names of the candidates for such offices on any other ticket, or by writing the names, if they are not printed upon the ballot, in the blank column under the title of the office. To vote for a person not on the ballot, write the name of such person, under the title of the office, in the blank column, and do not stamp a cross (X) after the name written in the blank column. ALL MARKS EXCEPT THE CROSS (X) ARE FORBIDDEN. ALL DISTINGUISHING MARKS OR ERASURES ARE FORBIDDEN AND MAKE THE BALLOT VOID.

If you WRONGLY STAMP, TEAR or DEFACE THIS BALLOT, return it to the inspector of election and obtain another.

The caption "Instructions to Voters" shall be printed as a side heading in forty-point gothic condensed capital type, and the body of the instructions shall be printed in ten-point lower case gothic, except that the words printed in capital letters in the foregoing instructions shall be printed in capital letters on the ballot.

7. All of the ballots of the same sort prepared by any county clerk or registrar of voters, or clerk or secretary of a legislative body, or other person having charge of the preparing of such ballots, for the same polling place, shall be precisely the same size, arrangement, quality, and tint of paper, and kind of type, and shall be printed with black ink of the same tint, so that without the numbers on the stubs it shall be impossible to distinguish any one of the ballots from the other ballots of the same sort; and the names of all candidates printed upon the ballot shall be in type of the same size and character.

8. If two or more officers are to be elected for the same office for different terms, the term for which each candidate for such office is nominated shall be printed on the ballot as a part of the title of the office. If, at a general election, an officer is to be elected for a full term, and another to fill a vacancy, the term for which each such candidate is nominated shall be printed as a part of the title of the office, and the name of the candidate to fill such

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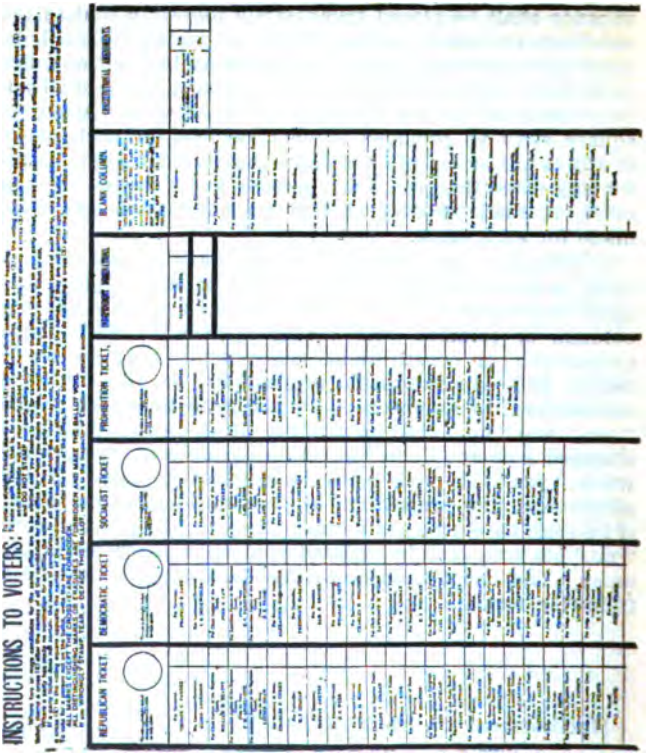
vacancy shall be placed immediately following that of the candidate for the full term. When no nomination has been made by a political party, as provided by law, for an office to be filled at the election, the title of such office shall not be printed in the party column, and no voting space or square shall be provided in such column for such office. If any ticket or list of candidates contains more candidates for any office than there are persons to be elected to such office, it shall be deemed that no nomination has been made for such office.

9. Whenever any proposition or constitutional amendment is to be submitted to the vote of the people, there shall be printed at the right of the blank column, another column, or columns with voting squares, in which such proposition, or constitutional amendment, shall be designated, and opposite such proposition, or constitutional amendment, to be voted on, in separate lines, the words "yes," and "no" shall be printed. If an elector shall have stamped a cross (X) in the voting square after the printed word "yes," his vote shall be counted in favor of the adoption of the proposition or constitutional amendment; if he shall have stamped a cross (X) after the printed word "no," his vote shall be counted against the adoption of the same. The ballot shall be printed in accordance with the following form:

[Indorsement on back of ballot.]

GENERAL TICKET.

SEVENTH CONGRESSIONAL DISTRICT.
THIRTY-EIGHTH SENATORIAL DISTRICT.
SEVENTY-SECOND ASSEMBLY DISTRICT.



En. March 12, 1872. Am'd. 1873-4, 73; 1891, 170; 1893, 305; 1899, 135; 1903, 144.

Cal.Rep.Cit. 58, 526; 96, 372; 96, 376; 108, 109; 114, 309; 130, 92; 136, 267; 137, 480.

Voting straight tickets: This section as it originally was passed in 1891 (Stats. 1891, p. 170) provided for the voting of straight tickets.

Freedom from mark or device: See post, sec. 1207.

§ 1198. Books and records of ballots. All ballots, when printed, shall be bound in stub books of one hundred ballots each. A record of the number of ballots printed by them

shall be kept by the respective county clerks, and by the clerk or secretary of the legislative body of each incorporated city or town. En. March 12, 1872. Am'd. 1873-4, 26; 1891, 172.

§ 1199. Number of ballots. The county clerk of each county shall provide for each election precinct in the county, not less than one hundred general tickets for every fifty or fraction of fifty electors registered in the election precinct; and in case of a consolidated city and county, an equal number of municipal tickets, when any city and county officers are to be elected; and the clerk or secretary of the legislative body of any incorporated city or town shall furnish a like number of municipal tickets when any city or town officer is to be elected. And upon the day of an election, immediately upon the arrival of the hour when the polls are required by law to be closed, the county clerk in each county shall openly, in his main office, in the presence of as many persons as may there assemble to observe his act, proceed to destroy every unused ballot which shall have remained in his possession, custody, or control, and forthwith make and file his affidavit, in writing, as to the number of ballots so destroyed. En. March 12, 1872. Am'd. 1891, 172; 1895, 300.

§ 1200. Error or omission in name of candidate. Whenever it shall appear by affidavit that an error or omission has occurred in the publication of the name or description of the candidates nominated for office, or in the printing of the ballots, the superior court of the county, or the judge thereof, shall, upon application by any elector, by order, require the county clerk to correct such error, or to show cause why such error should not be corrected. En. March 12, 1872. Am'd. 1891, 172.

§ 1201. Delivering ballots. Before the opening of the polls at any election within any county, the county clerk of the county shall cause to be delivered to the boards of election of each election precinct which is within the county, and in which the election is to be held, at the polling place of the election precinct, the proper number of general tickets of the kind to be used in the election precinct, in sealed packages, with marks on the outside clearly designating the precinct or polling place for which they are intended, and the number of ballots inclosed, and in

case of a consolidated city and county, also a like number of municipal tickets; and the clerk or secretary of any incorporated city or town shall in like manner cause to be delivered the proper number of municipal tickets. The county clerk, clerk, or secretary shall prepare a receipt for each polling place, enumerating the packages, and stating the time and day and date when the same were delivered by him to the inspectors of election. The inspectors of election shall sign said receipt upon receipt of the packages, which shall forthwith be returned and filed. The county clerk, clerk, and secretary, respectively, shall have authority to employ such messengers as may be necessary to insure the safe and expeditious delivery of the ballots to the inspectors or judges of election, as provided in this code, and the board of supervisors, or other board or body having the control of elections, shall allow such messengers a reasonable compensation for their services, to be paid as other election expenses are paid. In case of the prevention of an election in any precinct by the loss or the destruction of the ballots intended for that precinct, the inspector, or other election officer for that precinct, shall make an affidavit setting forth the fact, swear to the same before an officer authorized to administer oaths, and transmit it to the governor of this state. Upon receipt of such affidavit, the governor may order a new election in such precinct, and upon the application of any candidate for any office to be voted for by the electors of such precinct, the governor shall order a new election in such precinct. En. March 12, 1872. Am'd. 1891, 172.

§ 1202. Ballot clerks. At the same time and in the same manner as inspectors and judges of election are now appointed in this state, two ballot clerks for each election precinct in the state shall be appointed, whose duty it shall be to have charge of the ballots on the day of election, and to furnish them to the voters in the manner hereinafter provided. Such ballot clerks shall be electors of the precinct from which they are appointed, and shall be paid the same compensation as inspectors of election. In making appointments of such ballot clerks, one of them shall be taken from the political party that polled the largest number of votes at the last preceding general election, and the other from the party that polled the next

largest number of votes at such general election. They shall act as additional clerks of election when the polls are closed, and they shall serve until the votes are counted and the returns are signed; provided, that whenever a general and municipal election shall be held at the same time, there shall be appointed one additional inspector, one additional judge, and two additional clerks in the manner now provided by law. En. March 12, 1872. Am'd. 1891, 173; 1893, 303.

§ 1203. **Ballot boxes—Booths for voters.** All officers upon whom is imposed by law of the state the duty of designating polling places, shall cause such polling places to be suitably provided with a ballot-box, to be marked on the outside "General Tickets," and when any city, city and county, or town officers are to be elected, a second ballot box, to be marked on the outside "Municipal Tickets"; and shall also provide a sufficient number of places, booths, or compartments, at or in which voters may conveniently mark their ballots, so that in the marking thereof they may be screened from the observation of others; and a guard-rail shall be so constructed and placed that only such persons as are inside said rail can approach within six feet of the ballot boxes, and of such booths or compartments. The arrangements shall be such that neither the ballot boxes nor the box booths or compartments shall be hidden from the view of those just outside the said guard-rail. The number of such voting booths or compartments shall not be less than one for every forty electors qualified to vote in the precinct. No person other than electors engaged in receiving, preparing, or depositing their ballots shall be permitted to be within said rail before the closing of the polls, except by authority of the board of election, and then only for the purpose of keeping order and enforcing the law. Each of said voting booths or compartments shall be kept provided with proper supplies and conveniences for marking the ballots. And the election officers shall especially see that the stamps and ink pads required are at all times in such booths and in condition for proper use; and all officers upon whom is imposed by the law the duty of designating polling places, shall supply each polling place with several stamps and several ink pads for each booth, and such stamps shall be so made that a cross (X) may be made with either end of such stamp, and the same

must be so constructed that the portion with which such cross (X) is to be made shall not be fastened on by any glue or like substance which may loosen when wet, but the said stamp shall be one solid piece. En. March 12, 1872. Am'd. 1891, 173; 1893, 306; 1895, 301.

Cal.Rep.Cit. 136, 396.

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§ 1204. Manner of voting. Any person desiring to vote shall write his name and address (or if he be unable to write, shall have the same written for him) on a roster of voters provided for that purpose, and announce the same to one of the ballot clerks, who shall then, in an audible tone of voice, announce the same, and if the other ballot clerk finds the name on the register, he shall, in like manner, repeat the name and address, whereupon a challenge may be interposed, as provided in section one thousand two hundred and thirty of this code. If the challenge be overruled, the ballot clerk shall give him a ticket, and the clerk shall write on the register, opposite the name of the voter, the number of the general ticket given him, and also the number of the municipal ticket given him, when any city, city and county, or town officer is to be elected; and the voter shall be allowed to enter the place inclosed by the guard-rail, as above provided. The ballot clerk shall give him but one general ticket, and where any city, city and county, or town officers are to be elected, also one municipal ticket, and only one ballot of each kind; and in order to prevent voters from marking their ballots with a pencil, or otherwise contrary to law, it shall be the duty of the ballot clerk, whenever he shall deliver a ballot to any voter, to then orally, distinctly state to him, so that it may be heard by the bystanders, that he must mark the ballot with the stamp provided by law, or it will not be counted. En. March 12, 1872. Am'd. 1889, 425; 1891, 174; 1895, 301; 1899, 62.

Cal.Rep.Cit. 88, 75; 91, 532; 136, 400.

§ 1205. Idem. On receiving his ballot, the elector shall forthwith, and without leaving the inclosed space, retire alone to one of the places, booths or compartments provided, to prepare his ballot. If he intends to vote a straight party or independent ticket he shall stamp a cross (X) in the party voting circle at the head of such party or independent ticket, and such stamp shall be deemed to be

a vote for each candidate named on such party or independent ticket. If he intends to vote for some candidates, only, on one ticket, or for candidates on different tickets, he shall stamp a cross (X) in the voting square after the name of every candidate for whom he intends to vote, and this shall be counted as a vote for each person after whose name the voter has stamped such cross, or he may vote for a candidate or person whose name is not printed on the ballot by writing a name for such office in the "blank column," in which latter case the vote of such voter for that office shall be counted for the person whose name is so written. Where a party ticket does not contain the names of candidates for all offices for which the voter may vote, he may vote a straight ticket of such party, vote for candidates for such offices so omitted by stamping a cross (X) in the voting square opposite the names of the candidates for such offices on any other ticket, or by writing the names, if they are not printed upon the ballot, in the blank column under the title of the office.

Where two or more candidates for the same office are to be elected and the voter desires to vote for candidates for that office who are on the voter's party ticket and also for candidates for that office who are not on such ticket, he must stamp a cross (X) after the names of all the candidates for that office for whom the voter desires to vote whether they be on his party ticket or not.

Without stamping a cross (X) in the party voting circle, a voter may vote a straight party ticket by stamping a cross in the voting square opposite each name in the party column. In case of a constitutional amendment, or other proposition submitted to a vote of the people, he shall mark his ballot by stamping in the appropriate voting square a cross (X) opposite the answer he desires to give. All crosses shall be made only with a stamp, which with necessary pads and ink, shall be provided by the officers who by this code are required to furnish election supplies for each booth or compartment provided for the marking and preparation of ballots. Before leaving such booth or compartment the elector shall fold his ballot in such a manner that the number of the ballot and the indorsement on the back shall appear on the outside thereof, without displaying the marks on the face thereof, and

shall keep it folded until he has voted. Having folded his ballot, the voter shall deliver it folded to the inspector who shall announce in an audible tone of voice the name of the voter and the number of his ballot. The ballot clerk having the register in charge, if he finds the number to correspond with the number marked opposite the voter's name on the register, shall, in like manner, repeat the name and number, and shall write opposite the name the word "voted." The inspector shall then separate the slip containing the number from the ballot, and shall deposit the ballot in the box. The numbers of all ballots shall be immediately destroyed. En. March 12, 1872. Am'd. 1891, 174; 1893, 306; 1899, 139; 1903, 148.

Cal.Rep.Cit. 96, 372; 108, 109; 136, 400; 138, 22.

§ 1206. **Occupancy of booths.** Not more than one person shall be permitted to occupy any one booth at one time, and no person shall remain in or occupy a booth longer than necessary to prepare his ballot, and in no event longer than ten minutes. En. March 12, 1872. Am'd. 1891, 175.

Cal.Rep.Cit. 91, 530.

§ 1207. **Spoiled or unused ballots.** Any voter who shall spoil a ballot shall return such spoiled ballot to the ballot clerk and receive another one in its place, one at a time, not to exceed three in all. All the ballots thus returned shall be immediately canceled, and, with those not distributed to the voters, shall be returned with the registered list and ballots, as now provided in sections one thousand two hundred and sixty-three and one thousand two hundred and sixty-four of this code. Every elector who does not vote the ballot delivered to him, shall, before leaving the polling place, return such ballot to the ballot clerks having charge of the ballots, who shall immediately cancel the same and return them in the same manner as spoiled ballots. The ballot clerks shall account for the ballots delivered to them by returning a sufficient number of unused ballots to make up when added to the number of official ballots cast and the number of spoiled ballots returned, the number of ballots given to them, and it shall be the duty of the officers receiving such returned ballots to compel such an accounting; and immediately upon the closing of the polls, and before any ballot shall be taken

from the ballot boxes, or either thereof, the ballot clerks must, in the presence of all persons in the room who may desire to observe the same, proceed to deface every unused or spoiled ballot, by drawing across the face thereof, in writing ink, with a pen, two lines which shall cross each other, and said ballot clerks shall thereupon immediately, and before any ballots be taken from the ballot box, or either thereof, place all said ballots thus defaced within an envelope and seal said envelope, and thereupon a majority of the election officers shall immediately write their names across the sealed portion of said envelope. En. March 12, 1872. Am'd. 1891, 175; 1895, 302.

Cal.Rep.Cit. 46, 405; 91, 531; 108, 110.

§ 1208. Illiterate or helpless voters. When it appears from the register that any elector has declared under oath, when he registered, that he cannot read, or that by reason of physical disability he is unable to mark his ballot, he shall, upon request, receive the assistance of two of the officers of election, of different political parties, in the marking thereof, to be chosen as follows: One by the inspector then receiving the ballots, and the other by the judge of the opposite political party which at the last election cast the highest number of votes throughout the state, and in the event there are more judges than one of said party, then by the one of said judges who shall be named by said inspector. Neither of the persons appointed shall be of the same political party with the person appointing, nor shall either of said persons so making said appointments appoint the other for said purposes. Such officers shall thereafter give no information regarding the marking of said ballot. The officers making such appointments shall make the same in writing, and sign the same, and upon the same paper the persons so appointed shall subscribe and take the following oath before assisting such elector:

State of California, county of ——, assembly district number ——, —— precinct, ss.

—— and ——, being duly sworn, each for himself, says that he is one of the officers of election appointed to assist —— (here insert the name of the elector) in marking his ballot, and that he will not give any information, now or hereafter, regarding the same. —— ——

—— ——

Subscribed and sworn to before me, this —— day of ——, A. D. 18—.

—— ——

Said affidavit may be sworn to before any officer of election competent to administer an oath, and the same, with the indorsements thereon, shall be returned to the county clerk, as provided in section one thousand two hundred and sixty-one of this code.

Lists of the voters who have been assisted in marking their ballots shall be kept by the clerks keeping the poll lists, and shall be returned and preserved, as the poll lists are returned and preserved. As amended March twenty-third, eighteen hundred and ninety-three. En. March 12, 1872. Am'd. 1891, 175; 1893, 307; 1895, 302.

Cal.Rep.Cit. 46, 405; 92, 136; 108, 113; 121, 482; 136, 274.

§ 1209. **Removal of slip from ballot.** No member of the board of election shall deposit in the ballot box any ballot from which the slip containing the number of the ballot has not been removed by the inspector. En. March 12, 1872. Am'd. 1891, 175.

§ 1210. **Sample ballots.** The county clerk of each county, or, in case of separate city or town elections, the clerk or secretary of the legislative body of such city or town, shall cause to be printed, on plain white paper, without watermark or indorsements (except the words "Sample Ballot" printed on the back), at least as many copies of the form of ballot provided for use in each voting precinct as there shall be registered voters in such precinct. Such copy shall be designated "Sample Ballot," and shall be furnished to registered voters at the office of such clerk or secretary five days before the day fixed by law for such election, and at any time during such five days; provided, that not more than one sample ballot shall be furnished to any one voter. Such clerk or secretary shall cause to be printed, in large, clear type, on cards, instructions for the guidance of electors in obtaining and marking their ballots. He shall furnish one such card to every registered voter at the same time and in the same manner that he mails the sample ballot, as set forth in section eleven hundred and ninety-four; and twelve such cards to the board of election in each election precinct in his county, at the same time and in the same manner as the printed ballots and sample ballots. The board of election shall

post at least one of such cards in each booth or compartment provided for the preparation of ballots, and not less than three of such cards at other places in and about the polling place on the day of election. Section twelve hundred and fourteen and twelve hundred and fifteen of this code, and section sixty-one of the Penal Code, shall also be printed on each of said cards. En. March 12, 1872. Am'd. 1891, 175; 1899, 139.

Cal.Rep.Cit. 108, 540.

§ 1211. Canvassing of votes—Marked or spoiled ballots. 1. In canvassing the votes any ballot which is not made as provided in this act shall be void; but each ballot must be preserved and returned with the other ballots; provided, however, that two or more impressions of the voting stamp in one voting square, or a cross (X) made partly within and partly without a voting square or space shall not make such ballot void. Any name written upon a ballot shall be counted for the office under which it is written, provided it is written in the "blank column."

2. If a voter marks more names than there are persons to be elected to an office, or if, for any reason, it is impossible to determine the voter's choice for any office to be filled, his ballot shall not be counted for such office.

3. If a voter stamps in a circle at the head of one of the party columns, and also stamps in the voting square after the name of any candidate in the same or any other column, or writes the name of a person for such office in the blank column, such act does not invalidate his ballot, but his vote must be counted for the candidate opposite whose name the cross is made, or for the person whose name is so written in the blank column, and as to all other officers, the ballot must be counted as a straight party vote for the candidates for the offices under the circle stamped; where, however, there are two or more persons to be elected to the same office, and the voter places a cross opposite the name of a candidate not in the party column beneath the circle so stamped, or writes a name in the blank column for such office, then the ballot cannot be counted for the candidates for such office designated in the voter's party column, except in favor of those opposite whose names he also stamps a cross.

4. No mark upon a ballot which is unauthorized by this act shall be held to invalidate such ballot, unless it shall

appear that such mark was placed thereon by the voter for the purpose of identifying such ballot.

5. If the name of the same person is printed more than once on a ballot as a candidate for the same office, the placing of a cross opposite such name in more than one of the different places where it is so printed must not be regarded as putting a distinguishing mark on the ballot, and must be counted only as one vote for such person. En. March 12, 1872. Am'd. 1891, 176; 1899, 140; 1903, 149.

Cal.Rep.Cit. 108, 108; 108, 113; 120, 653; 127, 56; 127, 57; 136, 269; 136, 270; 136, 271; 136, 272; 136, 672.

§ 1212. **Time for voting.** Any person entitled to vote at a general election held within this state shall, on the day of such election, be entitled to absent himself from any service or employment in which he is then engaged or employed for the period of two consecutive hours, between the time of opening and the time of closing the polls; and such voter shall not, because of so absenting himself, be liable to any penalty, nor shall any deduction be made on account of such absence from his usual salary or wages. En. March 12, 1872. Am'd. 1891, 176.

§ 1213. **Certificate of nomination, destruction of or false making of.** No person shall falsely make or fraudulently deface or destroy any certificate of nomination, or any part thereof, or file any certificate of nomination, knowing the same, or any part thereof, to be falsely made, or suppress any certificate of nomination which has been duly filed, or any part thereof, or to make, use, keep, or furnish to others, except as in this code so directed, any paper watermark in imitation of ballot paper, or disclose the same to any person not engaged in making, printing, or distributing of ballot paper or ballots. En. Stats. 1891, 178.

§ 1214. **Destruction of supplies.** No person shall, during an election, remove or destroy any of the supplies or other conveniences placed in the voting-booths or compartments, as provided in this code, for the purpose of enabling the voter to prepare his ballot. No person shall, during an election, remove, tear down, or deface the cards printed for the instruction of voters. En. Stats. 1891, 178.

§ 1215. Disclosing name of candidate—Electioneering, etc. No officer of election shall disclose to any person the name of any candidate for whom any elector has voted. No officer of election, nor any person, shall do any electioneering on election day within one hundred feet of any polling place. No person shall remove any ballot from any polling-place before the closing of the poll. No person shall apply for or receive any ballot at any election precinct other than that in which he is entitled to vote. No person shall show his ballot after it is marked to any person in such a way as to reveal the contents thereof, or the name or names of the candidate or candidates for whom he has marked his ballot; nor shall any person, except a member of the board of election, receive from any voter a ballot prepared by such voter, or examine such ballot, or solicit the voter to show the same. No person shall ask another at a polling-place for whom he intends to vote. No voter shall receive a ballot from any other person than one of the ballot clerks; nor shall any other person than a ballot clerk deliver a ballot to such voter. No voter shall deliver to the board of election, or to any member thereof, any ballot other than the one he has received from the ballot clerk. No voter shall place any mark upon his ballot by which it may be afterward identified as the one voted by him. No person shall solicit a vote or speak to a voter on the subject of marking his ticket within one hundred feet of the polling place. En. Stats. 1891, 178.

Cal.Rep.Cit. 108, 108; 108, 109; 108, 110; 120, 653; 127, 56; 127, 57; 134, 152; 136, 269; 136, 270; 136, 271; 136, 269; 138, 20.

§ 1216. Registrar of voters. In all counties and cities and counties in this state having a registrar of voters and a board of election commissioners, the powers conferred and the duties imposed by this code upon the county clerks and other officers, in relation to matters of election and polling places, shall be exercised and performed by such registrar of voters and board of election commissioners, and all certificates of nomination required by this code to be made to county clerks shall be made to the registrar of voters. En. Stats. 1891, 178.

Cal.Rep.Cit. 97, 84; 111, 305.

CHAPTER IX.

VOTING AND CHALLENGES.

§ 1224. Voting, when to commence and continue.
§ 1225. Manner of voting.
§ 1226. Announcement of voter's name, etc.
§ 1227. Putting ballot in box.
§ 1228. Record that person has voted, how kept.
§ 1229. Same.
§ 1230. Grounds of challenge.
§ 1231. Proceedings on challenge for want of identity.
§ 1232. Proceedings on challenge for nonresidence in state.
§ 1233. Proceedings on challenge for nonresidence in precinct.
§ 1234. Proceedings on challenge for having before voted.
§ 1235. Proceedings for conviction of crime or defalcation.
§ 1236. Challenges, how determined.
§ 1237. Same.
§ 1238. If person refuses to be sworn, vote to be rejected.
§ 1239. Rules for the determination of questions of residence.
§ 1240. Term of residence, how computed.
§ 1241. Rules must be read, if requested.
§ 1242. Proceedings upon determination of challenge.
§ 1243. List of challenges to be kept.

§ 1224. Voting, when to commence and continue. Voting may commence as soon as the polls are opened, and may be continued during all the time the polls remain open. En. March 12, 1872.

§ 1225. Manner of voting. The person offering to vote must hand his ballot to the inspector, or to one of the judges acting as inspector, and announce his name and the number affixed to it on the register in use at the precinct where he offers his vote; provided, that in incorporated cities and towns the said person shall also give the name of the street, avenue, or location of his residence, and the number thereof, if it be numbered, or such clear and definite description of the place of such residence as shall definitely fix the same. En. March 12, 1872. Am'd. 1875-6, 26; 1877-8, 26.

Cal.Rep.Cit. 83, 76; 83, 77; 83, 79; 111, 423.

Register in use, printed copies to be posted: Ante, sec. 1149. Copies not to be torn or defaced: Ante, sec. 1150.

§ 1226. Announcement of voter's name, etc. The inspector, or judge acting as such, must receive the ballot, and before depositing it in the ballot box must, in an audible tone of voice, announce the name and register number; provided, that in incorporated towns and cities the said inspector, or judge acting as such, shall also

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announce the residence of the person voting, and the same shall be recorded on the poll list by the poll clerk. En. March 12, 1872. Am'd. 1875-6, 26; 1877-8, 26.

Cal.Rep.Cit. 83, 76; 83, 77; 83, 79.

§ 1227. Putting ballot in box. If the name be found on the register in use at the precinct where the vote is offered, and the vote is not rejected upon a challenge taken, the inspector, or judge acting as such, must, in the presence of the board of election, place the ballot, without opening or examining the same, in the ballot box; and no person shall be allowed to vote whose name is not on said register in use at the precinct. En. March 12, 1872. Am'd. 1873-4, 26; 1877-8, 26.

Cal.Rep.Cit. 136, 276.

Certified copy of register, prima facie evidence: See ante, sec. 1117.

Challenge: See post, secs. 1230 et seq.

§ 1228. Record that person has voted, how kept. When the ballot has been placed in the box, one of the judges must write the word "voted" opposite the number of the person on the printed copy of the register. En. March 12, 1872. Am'd. 1877-8, 27; 1880, 80.

§ 1229. Same. Each clerk must keep a list of persons voting, and the name of each person who votes must be entered thereon and numbered in the order of voting. En. March 12, 1872.

Official entry as prima facie evidence of facts stated therein: Code Civ. Proc., sec. 1926.

§ 1230. Grounds of challenge. A person offering to vote may be orally challenged by any elector of the county upon either or all of the following grounds:

1. That he is not the person whose name appears on the register.

2. That he has not resided within the state one year next preceding the election.

3. That he has not been a naturalized citizen of the United States for ninety days prior to the election.

4. That he has not resided within the county for ninety days preceding the election.

5. That he has not resided within the precinct for thirty days next preceding the election.

6. That he has before voted that day.

7. That he has been convicted of an infamous crime.

8. That he has been convicted of the embezzlement or misappropriation of public money. En. March 12, 1872. Am'd. 1880, 80.

List of challenges to be kept: Post, sec. 1243.

Subd. 1. Identity: See post, secs. 1231, 1236, subd. 1, and sec. 1237.

Subd. 2. One year's residence in state: See post, secs. 1232, 1237. Residence for voting purposes, rules for determining place of: Post, sec. 1239.

Subd. 3. Naturalization for ninety days: See ante, sec. 1083 and notes; also, see post, sec. 1237.

Subd. 4. Ninety days' residence in county: See ante, sec. 1083; post, secs. 1233, 1237.

Subd. 6. Previous voting: See post, secs. 1234, 1236, subd. 2.

Subd. 7. Conviction for infamous crime: See ante, sec. 1084; post, secs. 1235, 1237.

Subd. 8. Conviction for embezzlement, etc.: See ante, sec. 1084; post, secs. 1235, 1237.

§ 1231. Proceedings on challenge for want of identity. If the challenge is on the ground that he is not the person whose name appears on the great register, the inspector must tender him the following oath:

"You do swear (or affirm) that you are the person whose name is entered on the great register." En. March 12, 1872.

Taking the oath tendered determines challenge in favor of party challenged: Post, sec. 1236, subd. 1. Necessity of: Post, sec. 1237. Refusal bars vote: Post, sec. 1238. See also Pen. Code, sec. 43.

§ 1232. Proceedings on challenge for nonresidence in state. If the challenge is on the ground that he has not resided in the state for one year next preceding the election, the person challenged must be sworn to answer questions, and after he is sworn the following questions must be propounded to him by the inspector:

1. Have you resided in this state for one year immediately preceding this election?

2. Have you been absent from this state within one year immediately preceding this election? If yes, then,

3. When you left did you leave for a temporary purpose, with the design of returning, or for the purpose of remaining away?

4. Did you, while absent, regard this state as your home?

5. Did you, while absent, vote in any other state?

And such other questions as may be necessary to a determination of the challenge. En. March 12, 1872. Am'd. 1880, 81.

Before administering oath rules may be read: Post, sec. 1241.

Refusal to be sworn or to answer questions is misdemeanor: Pen. Code, sec. 43. And bars vote: Post, sec. 1238 of this code.

Place of residence of elector, rules for determining: Post, sec. 1239.

Challenge tried and determined by board of election at time of challenge: Post, sec. 1237. Proceedings after: Post, sec. 1242.

§ 1233. **Proceedings on challenge for nonresidence in precinct.** If the challenge is on the ground that he has not resided in the county for ninety days, or precinct for thirty days next preceding the election, the person challenged must be sworn to answer questions, and after he is sworn, the following questions must be propounded to him by the inspector:

1. When did you last come into this county or election precinct?

2. When you came into this county or precinct, did you come for a temporary purpose, merely, or for the purpose of making it your home?

3. Did you come into this county or precinct for the purpose of voting here?

And such other questions as may be necessary to a determination of the challenge. En. March 12, 1872. Am'd. 1880, 81.

§ 1234. **Proceedings on challenge for having before voted.** If the challenge is on the ground that the person challenged has before voted that day, the inspector must tender to the person challenged this oath:

"You do swear (or affirm) that you have not before voted this day." En. March 12, 1872.

Cal.Rep.Cit. 75, 628.

Taking the oath tendered defeats challenge: Post, sec. 1236, subd. 2. Refusal bars vote: Post, sec. 1238.

Voting twice, or oftener, is felony: Pen. Code, sec. 45. Attempt is misdemeanor: Pen. Code, sec. 46.

§ 1235. Proceedings for conviction of crime or defalcation. If the challenge is on the ground that the person challenged has been convicted of an infamous crime, or that he has been convicted of the embezzlement or misappropriation of public money, he must not be questioned, but the fact may be proved by the production of an authenticated copy of the record, or by the oral testimony of two witnesses. En. March 12, 1872. Am'd. 1880, 81.

§ 1236. Challenges, how determined. Challenges upon the grounds either:

1. That the person challenged is not the person whose name appears on the great register;

2. That the party has before voted on that day—

Are determined in favor of the party challenged by his taking the oath tendered. En. March 12, 1872.

§ 1237. Same. If the challenge is on the ground that the person challenged is not the person whose name appears on the great register, he must take the oath tendered by the board. Challenges for causes other than those specified in the preceding section must be tried and determined by the board of election at the time of the challenge. En. March 12, 1872. Am'd. 1880, 81.

§ 1238. If person refuses to be sworn, vote to be rejected. If any person challenged refuses to take the oaths tendered, or refuses to be sworn and to answer the questions touching the matter of residence, he must not be allowed to vote. En. March 12, 1872.

Refusal to be sworn or to answer questions is misdemeanor: Pen. Code, sec. 43.

§ 1239. Rules for the determination of questions of residence. The board of election, in determining the place of residence of any person, must be governed by the following rules, as far as they are applicable:

1. That place must be considered and held to be

the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning;

2. A person must not be held to have gained or lost residence by reason of his presence or absence from a place while employed in the service of the United States, of of this state, nor while engaged in navigation, nor while a student at any institution of learning, nor while kept in an almshouse, asylum, or prison;

3. A person must not be considered to have lost his residence who leaves his home to go into another state, or precinct in this state, for temporary purposes merely, with the intention of returning;

4. A person must not be considered to have gained a residence in any precinct into which he comes for temporary purposes merely, without the intention of making such precinct his home;

5. If a person remove to another state with the intention of making it his residence, he loses his residence in this state;

6. If a person remove to another state with the intention of remaining there for an indefinite time, and as a place of present residence, he loses his residence in this state, notwithstanding he entertains an intention of returning at some future period;

7. The place where a man's family resides must be held to be his residence; but if it be a place for temporary establishment for his family, or for transient objects, it is otherwise;

8. If a man have a family fixed in one place, and he does business in another, the former must be considered his place of residence; but any man having a family, and who has taken up his abode with the intention of remaining, and whose family does not so reside with him, must be regarded as a resident where he has so taken up his abode;

9. The mere intention to acquire a new residence, without the fact of removal, avails nothing; neither does the fact of removal, without the intention. En. March 12, 1872. Am'd. 1873-4, 26; 1897, 191.

Cal.Rep.Cit. 83, 82; 120, 638.

Questions as to residence: Ante, secs. 1232, 1233.

Compare with this section, rules for determining place of residence generally: Ante, sec. 52.

Term of residence, how computed: Post, sec. 1240.

Subd. 2. Constitutional basis: See Const. Cal., art. II, sec. 4.

§ 1240. Term of residence, how computed. The term of residence must be computed by including the day on which the person's residence commenced, and by excluding the day of the election. En. March 12, 1872.

§ 1241. Rules must be read, if requested. Before administering an oath to a person touching his place of residence, the inspector must, if requested by any person, read to the person challenged the rules prescribed by sections 1238 and 1239. En. March 12, 1872.

Oath touching place of residence: Ante, secs. 1232, 1233.

§ 1242. Proceedings upon determination of challenge. If the challenge is determined against the person offering to vote, the ballot offered must, without examination, be returned to him; if determined in his favor, the ballot must be deposited in the ballot box. En. March 12, 1872.

§ 1243. List of challenges to be kept. The board must cause one of the clerks to keep a list, showing:

1. The names of all persons challenged;
2. The grounds of such challenges;
3. The determination of the board upon the challenge.

En. March 12, 1872.

CHAPTER X.

CANVASSING AND RETURNING THE VOTE.

§ 1252. Canvass to be public and without adjournment.
§ 1253. Canvass, how commenced.
§ 1254. Ballots must be made to agree with names on the list.
§ 1255. Same.
§ 1256. Same.
§ 1257. Counting the votes.
§ 1258. Tallies.
§ 1259. Tickets to be strung and inclosed in sealed envelopes.
§ 1260. Return list.
§ 1261. Certain papers to be sealed up.
§ 1262. Inspector to keep certain papers.
§ 1263. Returns and ballots to be delivered to a member of the board.

§ 1264. To whom ballots to be delivered.
§ 1265. Clerk to keep ballots unopened.
§ 1266. When package containing ballots may be destroyed.
§ 1267. Returns to be delivered by clerk to supervisors.
§ 1268. Copy of register to be filed in county clerk's office.

§ 1252. Canvass to be public and without adjournment. As soon as the polls are finally closed the judges must immediately proceed to canvass the votes given at such election. The canvass must be public, in the presence of bystanders, and must be continued without adjournment until completed and the result thereof is declared. En. March 12, 1872.

Cal.Rep.Cit. 111, 421; 111, 423.

§ 1253. Canvass, how commenced. The canvass must be commenced by taking out of the box the ballots unopened (except so far as to ascertain whether each ballot is single), and counting the same to ascertain whether the number of ballots corresponds with the number of names on the list of voters kept by the clerks. In the city and county of San Francisco, at the closing of the polls, the inspector must administer to the additional members of the board of canvassers the oath prescribed in section one thousand one hundred and forty-eight, and likewise to two clerks appointed by such additional members. He must then proceed to take out of the box the ballots, unopened, one at a time, numbering them on the backs in numerical order, commencing with number one, and writing with ink the initials of his own name upon the back of each ballot as taken out. He shall pass each ballot, as soon as thus indorsed, to the additional inspector, who must, in like manner, write thereon the initials of his own name, so that each ballot can be subsequently identified by either or both such inspectors. En. March 12, 1872. Am'd. 1873-4, 28.

Cal.Rep.Cit. 111, 422.

List of voters: Ante, sec. 1229.

§ 1254. Ballots must be made to agree with names on the list. If two or more separate ballots are found so folded together as to present the appearance of a single ballot, they must be laid aside until the count of the ballots is completed; then, if upon comparison of the count with the number of names of electors on the lists which have been kept by the clerks, it appears that the two ballots thus

folded together were cast by one elector, they must be rejected. En. March 12, 1872. Am'd. 1873-4, 29.

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§ 1255. Same. The ballots must be immediately replaced in the box, and if the ballots in the box exceed in number the names on the lists, one of the judges must publicly, and without looking in the box, draw out therefrom singly, and destroy, unopened, a number of ballots equal to such excess; and the board of election must make a record, upon the poll list, of the number of ballots so drawn and destroyed. In the city and county of San Francisco the numbers appearing on the backs of the ballots so drawn must likewise be recorded. En. March 12, 1872. Am'd. 1873-4, 29.

§ 1256. Same. The number of ballots agreeing or being thus made to agree with the number of names on the lists, the lists must be signed by the members of the board and attested by the clerks, and the number of names thereon must be set down in words and figures at the foot of each list, and over the signatures of the judges and the attestation of the clerks, substantially in the form prescribed in section 1174. En. March 12, 1872.

§ 1257. Counting the votes. After the lists are thus signed, the board must proceed to open the ballots, and count and ascertain the number of votes cast for each person voted for. At all elections where a general ticket and a municipal ticket are used, the canvass of the general ticket shall be completed before the canvass of the municipal ticket is commenced. All ballots rejected for illegality must be indorsed upon the ballot the cause of such rejection and signed by a majority of the election board, and thereafter strung upon a string. En. March 12, 1872. Am'd. 1889, 109; 1891, 176; 1893, 308; 1899, 140.

§ 1258. Tallies. Each clerk must write down each office to be filled, and the name of each person marked in each ballot as voted for to fill such office, and keep the number of votes by tallies, as they are read aloud. Such tallies must be made with pen and ink, and immediately upon the completion of the tallies the clerks who respectively complete the same must draw two heavy lines in ink from the last tally mark to the end of the line in which such tallies terminate, and also write the initials

of the person making the last tally in such line. En. March 12, 1872. Am'd. 1889, 110; 1891, 177; 1895, 303.

Cal.Rep.Cit. 136, 400.

§ 1259. Tickets to be strung and inclosed in sealed envelopes. The ballot, as soon as the names marked on it as voted for are read and verified, must be strung on a string by one of the judges and must not thereafter be examined by any person, but must, as soon as all are counted, be carefully sealed in a strong envelope, each member of the board writing his name across the seal. En. March 12, 1872. Am'd. 1889, 11; 1891, 177; 1899, 141.

Cal.Rep.Cit. 67, 306; 97, 86.

§ 1260. Return list. As soon as all the votes are counted and the tickets sealed up, lists must be attached to the tally lists, containing the names of persons voted for and for what office, and the number of votes given for each candidate, the number being written at full length, and such lists must be signed by the members of the board, and attested by the clerks, substantially in the form in section 1174 given. En. March 12, 1872.

§ 1261. Certain papers to be sealed up. The board must, before it adjourns, inclose in a cover, and seal up and direct to the county clerk, the copy of the register upon which one of the judges marked the word "voted" as the ballots were received, all certificates of registration received by it, one of the lists of the persons challenged, one copy of the list of voters, and one of the tally lists and list attached thereto. The board must also, before it adjourns, post conspicuously, on the outside of the polling place, a copy of the result of the votes cast at such polling place; such copy of the result must be signed by the members of the board, and attested by the clerks.

The board must also immediately transmit unsealed to the county clerk a copy of the result of the votes cast at such polling place, which copy must be signed by the members of the board, and which copy shall be open to the inspection of the public. It shall be a misdemeanor for any person to remove or deface such posted copy of the result or to delay or change the copy to be delivered to the county clerk. En. March 12, 1872. Am'd. 1873-4, 29; 1899, 63; 1899, 88; 1901, 5.

Cal.Rep.Cit. 132, 284.

§ 1262. Inspector to keep certain papers. The inspector must retain, open to the inspection of all electors, for at least six months, the other list of voters, tally list, and list attached thereto. En. March 12, 1872. Am'd. 1873-4, 30.

Cal.Rep.Cit. 132, 284.

§ 1263. Returns and ballots to be delivered to a member of the board. The sealed packages containing the register, lists, papers, and ballots, must, before the board adjourns, be delivered to one of its number, to be determined by lot, unless otherwise agreed upon. En. March 12, 1872.

Cal.Rep.Cit. 132, 284.

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§ 1264. To whom ballots to be delivered. The member to whom such packages are delivered must, without delay, deliver such packages, without their having been opened, to the county clerk, nearest postmaster, or sworn express agent, who shall indorse on such package the name of the party delivering them, and date of such delivery. If delivered to a postmaster or express agent, such postmaster or express agent shall forward the packages by the first mail or express to the county seat. In the city and county of San Francisco such packages must be delivered to the county clerk within three hours from the time of adjournment of the board, which time of adjournment must be indorsed upon such package and upon each poll list, in ink, and signed by a majority of the members of such board. In the city and county of San Francisco the packages must be put up and sealed in the following manner, by an inspector and at least three others of the board, and be signed with their respective signatures, across the same, written: One package to contain the ballots only; one package to contain one tally list and list attached, only; one package to contain the ward register and certificates of registration issued by the county clerk after making up the ward register, and received at the polls. En. March 12, 1872. Am'd. 1873-4, 30; 1893, 308.

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§ 1265. Clerk to keep ballots unopened. On receipt of the packages the clerk must file the one containing ballots and must keep it unopened and unaltered for twelve

months, after which time, if there is not a contest commenced in some tribunal having jurisdiction about such election, he must burn the package without opening or examining its contents; provided however, that after the time limited for a contest, and in the event any contests have been commenced, then after said ballots have been opened and counted by the superior court in said contests, a judge of the superior court of the county wherein said ballots were voted may order said packages to be opened for inspection in any case being tried in his court where he has jurisdiction of the same, whenever he shall deem it necessary to inspect the ballots contained in said packages in order to produce testimony to establish the proof of any material issue of fact arising in the course of the trial of said case. In no event shall the said packages, or any of them, or the ballots contained therein, be taken from the custody of the county clerk. Whenever said packages, or any of them, shall have been inspected and examined, and a record made of the testimony therein contained, the same shall be restored to the exclusive control and custody of the county clerk, who shall reseal the packages with the ballots contained therein, and keep the same until he shall burn them, in accordance with the direction of this section; provided further, that if in any congressional district within this state there has been or shall be filed a contest of the election of any person declared to have been elected a member of congress, and the county clerk or registrar of voters in any county or city and county be notified by the contestant, that such congressional election contest is pending, then and in that case such county clerk or registrar of voters shall not destroy the ballots in that county or city and county, or in the part or portion thereof within such congressional district in which such contest is pending, until the final determination of such contest before the house of representatives of the congress of the United States; and such county clerk or registrar of voters shall hold such ballots in his custody subject to the inspection of any committee of the house of representatives or sub-committee thereof, having in charge the investigation of such contest, and shall produce such ballots for examination before any such committee of the house of representatives or subcommittee or before any commissioner designated by

such congressional committee or sub-committee or before any officer designated by act of congress and duly selected to take depositions and proof in any such contest of the election of any person to congress. En. March 12, 1872. Am'd. 1893, 309; 1903, 42.

Cal.Rep.Cit. 80, 361; 97, 86.

Contest: See Code Civ. Proc., secs. 1111-1127.

§ 1266. When package containing ballots may be destroyed. If within twelve months there is such a contest commenced, he must keep the package unopened and unaltered until it is finally determined, when he must, as provided in the preceding section, destroy it, unless such package is, by virtue of an order of the tribunal in which the contest is pending, brought and opened before it, to the end that evidence may be had of its contents, in which event the package and contents are in the custody of such tribunal. En. March 12, 1872.

Cal.Rep.Cit. 67, 306; 80, 361; 97, 86; 97, 89; 111, 423.

§ 1267. Returns to be delivered by clerk to supervisors. The other package the clerk must produce before the board of supervisors, when it is in session for the purpose of canvassing returns. En. March 12, 1872.

Canvassing returns: See post, secs. 1278-1280.

§ 1268. Copy of register to be filed in county clerk's office. As soon as the returns are canvassed the clerk must take the copy of the register returned and file it in his office. En. March 12, 1872.

Cal.Rep.Cit. 111, 131; 132, 284.

CHAPTER XI.

CANVASS OF RETURNS—DECLARATION OF RESULT—COMMISSIONS AND CERTIFICATES OF ELECTION.

§ 1278. Meeting of supervisors to canvass returns.
§ 1279. Same. (Repealed.)
§ 1280. Same.
§ 1281. Canvass, how made.
§ 1282. Statement of result to be entered of record.
§ 1283. Declaration of result.
§ 1284. Certificates issued by clerk.
§ 1285. District returns, how made up.
§ 1286. How transmitted.
§ 1287. Duty of clerks receiving district returns.
§ 1288. State returns, how made.
§ 1289. How transmitted.

§ 1290. Duty of secretary of state relative to.
§ 1291. Commissions issued by governor.
§ 1292. Returns of election for governor and lieutenant-governor, how made.
§ 1293. How transmitted.
§ 1294. Same.
§ 1295. Same.
§ 1296. Canvass of returns of election for governor and lieutenant-governor.
§ 1297. Defects in form of returns, when to be disregarded.

§ 1278. Meeting of supervisors to canvass returns. The board of supervisors of each county must meet, at their usual place of meeting, on the first Monday after each election, to canvass the returns. En. March 12, 1872. Am'd. 1887, 119.

Cal.Rep.Cit. 52, 9; 52, 21; 111, 131; 132, 284.

§ 1279. Same. (Repealed.) En. March 12, 1872. Rep. 1887, 119.

Cal.Rep.Cit. 52, 21.

§ 1280. Same. If at the time of meeting, the returns from each precinct in the county in which polls were opened have been received, the board must then and there proceed to canvass the returns; but if all the returns have not been received the canvass must be postponed from day to day until all the returns are received, or until six postponements have been had. En. March 12, 1872.

Cal.Rep.Cit. 52, 9; 52, 21; 111, 131; 132, 284; 132, 285.

§ 1281. Canvass, how made. The canvass must be made in public, and by opening the returns and estimating the vote of such county or township for each person voted for, and for and against each proposition voted upon at such election, and declaring the result thereof; and such count must be continued daily, Sundays and holidays excepted, and for not less than six (6) hours each and every day until completed. En. March 12, 1872. Am'd. 1899, 66.

Cal.Rep.Cit. 52, 4; 52, 9; 52, 21; 111, 131.

§ 1282. Statement of result to be entered of record. The clerk of the board must, as soon as the result is declared, enter on the records of such board a statement of such result, which statement must show:

1. The whole number of votes cast in the county;
2. The names of the persons voted for, and the propositions voted upon;
3. The office to fill which each person was voted for;

4. The number of votes given at each precinct to each of such persons, and for and against each of such propositions;

5. The number of votes given in the county to each of such persons, and for and against each of such propositions voted upon. En. March 12, 1872.

Cal.Rep.Cit. 52, 9; 52, 21; 111, 130; 132, 285.

§ 1283. Declaration of result. The board must declare elected the person having the highest number of votes given for each office to be filled by the votes of a single county or subdivision thereof. En. March 12, 1872.

Cal.Rep.Cit. 85, 512.

Irregularities or defect or informality in return: Post, sec. 1297.

§ 1284. Certificates issued by clerk. The county clerk must immediately make out and deliver to such person (except to the person elected superior judge) a certificate of election signed by him, and authenticated with the seal of the superior court. En. March 12, 1872. Am'd. 1880, 20; 1880, 82.

Cal.Rep.Cit. 85, 512; 127, 350.

§ 1285. District returns, how made up. When there are officers, other than representatives in congress, members of the state board of equalization, and railroad commissioners voted for, who are chosen by the electors of a district composed of two or more counties, each of the county clerks of the counties composing such district, immediately after making out the statement specified in section twelve hundred and eighty-two, must make a certified abstract of so much thereof as relates to the election of such officers. En. March 12, 1872. Am'd. 1880, 82.

§ 1286. How transmitted. The clerk must seal up such abstract, indorse it "Election Returns," and, without delay, transmit the same by mail to the county clerk of the county which stands first in alphabetical arrangement in the list of counties composing such district. En. March 12, 1872.

§ 1287. Duty of clerks receiving district returns. The clerk to whom the election returns of a district are made, must, on the twentieth day after such election, or sooner, if returns from all the counties in the district have been received, open in public such returns, and from them and

the statement of the vote for such officers in his own county:

1. Make a statement of the vote of the district for such officers, and file the same, together with the returns, in his office;

2. Transmit a certified copy of such statement to the secretary of state;

3. Make out and deliver, or transmit by mail, to the persons elected a certificate of election (unless it is by law otherwise provided). En. March 12, 1872.

§ 1288. **State returns, how made.** When there has been a general or special election for officers chosen by the electors of the state at large, or for judicial officers (except justices of the peace), or for members of the state board of equalization, or for railroad commissioners, or for senators and members of the assembly, each county clerk, so soon as the statement of the vote of his county is made out and entered upon the records of the board of supervisors, must make out a certified abstract of so much thereof as relates to the votes given or cast for persons for said offices to be filled at such election. Whenever there is a general or special election held within this state, and any proposed constitutional amendment or proposition to be voted for by the electors of the state at large, each county clerk, so soon as the statement of the vote is made out and entered upon the record of the board of supervisors, must make out a certified abstract of such vote. En. March 12, 1872. Am'd. 1880, 82; 1901, 289.

Cal.Rep.Cit. 52, 5; 52, 6; 52, 7; 52, 22; 52, 25.

§ 1289. **How transmitted.** The clerk must seal up such abstract, indorse it "Election Returns," and without delay transmit it by mail to the secretary of state. En. March 12, 1872.

Cal.Rep.Cit. 52, 22.

§ 1290. **Duty of secretary of state relative to.** On the fortieth day after the day of election, or so soon as the returns have been received from all the counties of the state, if received within that time (except in this code otherwise provided), the secretary of state must compare and estimate the vote, and make out and file in his office a statement thereof, and transmit a copy of such statement

to the governor, except in the cases of senators and members of the assembly. En. March 12, 1872. Am'd. 1880, 82; 1901, 294.

Cal.Rep.Cit. 85, 512.

§ 1291. Commissions issued by governor. Upon receipt of such copy, the governor must issue commissions to the persons who from it appear to have received the highest number of votes for offices, except that of governor or lieutenant-governor, to be filled at such election. En. March 12, 1872.

Cal.Rep.Cit. 85, 512; 138, 36.

Except that of governor and lieutenant-governor: See post, secs. 1292 et seq.

§ 1292. Returns of election for governor and lieutenant-governor, how made. When an election has been held to fill the office of governor or lieutenant-governor, the clerk of each county, in addition to the abstract made for transmission to the secretary of state, must, as soon as the statement of the vote of his county is made out and entered upon the records of the board of supervisors, make two certified abstracts of so much thereof as relates to the vote given for such officers. En. March 12, 1872.

Election for governor and lieutenant-governor: Const. Cal., art. V, secs. 2, 15.

§ 1293. How transmitted. The clerk must seal up each abstract separately, and indorse thereon "Election Returns for Governor and Lieutenant-Governor." En. March 12, 1872.

Returns to be sealed: Const. Cal., art. V, sec. 4.

§ 1294. Same. He must at once direct one copy to "The Speaker of the Assembly next to meet," address it to Sacramento, California, and deposit it, postpaid, in the postoffice. En. March 12, 1872.

Returns to be directed to speaker of assembly: Const. Cal., art. V, sec. 4.

§ 1295. Same. The other copy he must direct and address in the same manner, and at once deliver it to a member elect of the legislature, or to a senator who holds over; and the person to whom it is so delivered must deliver it to the speaker on or before the second day next after his election. En. March 12, 1872.

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§ 1296. Canvass of returns of election for governor and lieutenant-governor. The returns of election for governor and lieutenant-governor must, during the first week of the session, be opened, canvassed, and the result declared by the speaker of the assembly in presence of both houses. En. March 12, 1872.

Returns to be opened and published in presence of both houses of legislature: Const. Cal., art. V, sec. 4.

§ 1297. Defects in form of returns, when to be disregarded. No declaration of the result, commission, or certificate must be withneld on account of any defect or informality in the return of any election, if it can with reasonable certainty be ascertained from such return what office is intended and who is elected thereto. En. March 12, 1872.

CHAPTER XII.

ELECTION FOR ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

§ 1307. Electors, when chosen.
§ 1308. Returns, how made.
§ 1309. How transmitted.
§ 1310. Messenger, when clerk may employ.
§ 1311. Proof of necessity for and approval of appointment of messenger.
§ 1312. Compensation of messenger.
§ 1313. Duties of secretary of state relative to returns.
§ 1314. Duty of governor.
§ 1315. Meeting of electors.
§ 1316. Vacancies in, how supplied.
§ 1317. Voting by electors, and returns.
§ 1318. Separate ballots for president and vice-president.
§ 1319. Must make lists of persons voted for.
§ 1320. Result to be transmitted to the president of the United States senate.
§ 1321. Compensation of electors.
§ 1322. How audited and paid.

§ 1307. Electors, when chosen. At the general election in each bisextile or leap year, unless by the laws of the United States another time is fixed, and then at such time there must be chosen by the qualified voters of the state, as many electors of president and vice-president of the United States as the state is then entitled to. En. March 12, 1872.

Choosing presidential electors: Const. U. S., art. II, sec. 1, and amend. 12.

§ 1308. Returns, how made. The clerk of each county, as soon as the statement of the vote of his county at such election is made out and entered on the records of the board of supervisors, must make a certified abstract of so much thereof as relates to the vote given for persons for electors of president and vice-president of the United States. En. March 12, 1872.

§ 1309. How transmitted. The clerk must seal up such abstract, indorse it "Presidential Election Returns," and without delay transmit it to the secretary of state by mail or in the manner hereinafter prescribed. En. March 12, 1872.

§ 1310. Messenger, when clerk may employ. If the county clerk of any county has reason to believe that the abstract will not, in the due course of mail, reach the secretary of state before the time fixed by law for canvassing the returns of such election, he may, with the approval of the superior judge, employ a person to convey and deliver such abstract to the secretary of state. En. March 12, 1872. Am'd. 1880, 21; 1880, 82.

§ 1311. Proof of necessity for and approval of appointment of messenger. In the event provided for in the preceding section, the clerk must make an affidavit, setting forth the reasons for his belief, and the name of the person employed by him, which affidavit, with the approval of the superior judge indorsed thereon, must be given to the person appointed, and by him, with the abstract, must be delivered to the secretary of state. En. March 12, 1872. Am'd. 1880, 82.

§ 1312. Compensation of messenger. The person appointed by the clerk, after he delivers the abstract and statement, is entitled to receive as compensation mileage at the rate of thirty cents a mile from the county seat to the seat of government. His account therefor, certified by the secretary of state, must be audited by the controller and paid out of the general fund in the state treasury. En. March 12, 1872.

§ 1313. Duties of secretary of state relative to returns. On the last Monday in the month of the election, or as soon as the returns have been received from all the coun-

ties in the state, if received before that time, the secretary of state must compare and estimate the votes given for electors, and certify to the governor the names of the proper number of persons having the highest number of votes. En. March 12, 1872.

§ 1314. Duty of governor. The governor must, upon the receipt of such certificate, transmit to each of such persons a certificate of election, and on or before the day of their meeting deliver to the electors a list of the names of electors, and must do all other things required of him in the premises by any act of congress in force at the time. En. March 12, 1872.

§ 1315. Meeting of electors. The electors chosen must assemble at the seat of government on the second Monday in January next following their election, at two o'clock in the afternoon. En. March 12, 1872. Am'd. 1889, 1.

§ 1316. Vacancies in, how supplied. In case of the death or absence of any elector chosen, or in case the number of electors from any cause be deficient, the electors then present must elect, from the citizens of the state, so many persons as will supply such deficiency. En. March 12, 1872.

§ 1317. Voting by electors, and returns. The electors, when convened, must vote by ballot for one person for president and one person for vice-president of the United States, one of whom, at least, is not an inhabitant of this state. En. March 12, 1872.

Casting electoral vote: Art. XII of amdts. to Const. U. S.

§ 1318. Separate ballots for president and vice-president. They must name in their ballots the persons voted for as president, and in distinct ballots the persons voted for as vice-president. En. March 12, 1872.

§ 1319. Must make lists of persons voted for. They must make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes given for each. En. March 12, 1872.

§ 1320. Result to be transmitted to the president of the United States senate. They must certify, seal up, and

transmit by mail such lists to the seat of government of the United States, directed to the president of the senate. En. March 12, 1872.

§ 1321. **Compensation of electors.** Electors receive the same pay and mileage as is allowed to members of the assembly. En. March 12, 1872.

Pay and mileage allowed to members of assembly: See ante, sec. 266.

§ 1322. **How audited and paid.** Their accounts therefor, certified by the secretary of state, must be audited by the controller, who must draw his warrants for the same on the treasurer, payable out of the general fund. En. March 12, 1872.

CHAPTER XIII.

ELECTIONS FOR MEMBERS OF CONGRESS.

Article I. Election for Senators, §§ 1332, 1333.
II. Election for Representatives, §§ 1343-1347.

ARTICLE I.

ELECTION FOR SENATORS.

§ 1332. Elections for full terms.
§ 1333. Elections to fill vacancies.

§ 1332. **Elections for full terms.** Elections for senators in congress for full terms must be held at the regular session of the legislature next preceding the commencement of the term to be filled. En. March 12, 1872.

Elections for senators and representatives, by whom prescribed: Const. U. S., art. I, sec. 4.

§ 1333. **Elections to fill vacancies.** Elections to fill a vacancy in the term of a United States senator must be held at the session of the legislature next succeeding the occurrence of such vacancy. En. March 12, 1872.

Vacancy during recess of legislature temporarily filled by executive of state: Const. U. S., art. I, sec. 3.

ARTICLE II.

ELECTIONS FOR REPRESENTATIVES.

§ 1343. When held.
§ 1344. Returns, how made.
§ 1345. How transmitted.
§ 1346. Duty of secretary of state relative to.
§ 1347. Certificates issued by governor.

§ 1343. When held. At the general election to be held in the year eighteen hundred and eighty, and at the general election every two years thereafter, there must be elected, for each congressional district, one representative to the congress of the United States. En. March 12, 1872. Am'd. 1880, 82.

§ 1344. Returns, how made. The clerk of each county, as soon as the statement of the vote of his county at such election is made out and entered on the records of the board of supervisors, must make a certified abstract of so much thereof as relates to the vote given for persons for representatives to congress. En. March 12, 1872.

Cal.Rep.Cit. 52, 9; 52, 15; 52, 32; 132, 285.

§ 1345. How transmitted. The clerk must seal up such abstract, indorse it "Congressional Election Returns," and without delay transmit it by mail to the secretary of state. En. March 12, 1872.

Cal.Rep.Cit. 52, 10; 52, 15.

§ 1346. Duty of secretary of state relative to. On the sixtieth day after the day of election, or as soon as the returns have been received from the counties of the state, comprising any one district, if received within that time, the secretary of state must compare and estimate the votes given or cast for such representatives, and certify to the governor the person having the highest number of votes in each congressional district as duly elected. En. March 12, 1872. Am'd. 1901, 294.

Cal.Rep.Cit. 52, 7; 52, 10; 132, 285.

§ 1347. Certificate issued by governor. The governor must, upon the receipt of such certificate, transmit to each of such persons a certificate of his election, sealed with the great seal and attested by the secretary of state. En. March 12, 1872.

CHAPTER XIV.

PRIMARY ELECTIONS.

§ 1357. Delegates to be elected at primary elections.
§ 1358. Terms as used in this chapter defined.
§ 1359. To be conducted as other elections.
§ 1360. Under what control—Expenses—Returns.
§ 1361. Parties entitled to designation upon official ballot—Petitions.
§ 1362. When shall be held.
§ 1363. Secretary of state to transmit copies of petitions—Apportionment of delegates—Notice.
§ 1364. Election officers—Precincts.
§ 1365. Ballots.
§ 1366. Qualifications and registration of voters.
§ 1367. Manner of voting—Challenge.
§ 1368. Legality of conventions.
§ 1369. List of delegates holding credentials.
§ 1370. Penalty for failure to act as primary officer.
§ 1371. Election commissioners, who may act.
§ 1372. This chapter, where mandatory and where optional.
§ 1373. Presidential primary in May.
§ 1374. Ballots, preservation of—Contests.
§ 1375. Vacancies, additional vote.
§ 1376. Registration of voters. (Repealed.)
§ 1377. Delegates, election of. (Repealed.)
§ 1378. Delegates, lists and credentials. (Repealed.)
§ 1379. Offenses against. (Repealed.)
§ 1380. Proceedings where no board of election commissioners. (Repealed.)

§ 1357. Delegates to be elected at primary elections. All delegates elected under the provisions of this chapter to conventions of political parties for the purpose of making nominations of candidates for public office within this state shall be elected at elections to be known and designated as primary elections, and conducted at the time and place, and under the regulations in this chapter hereinafter specified, and not otherwise. En. March 12, 1872. Am'd. 1873-4, 74. Rep. 1899, 56; 1901, 606. En. Stats. 1901, 606.

§ 1358. Terms as used in this chapter defined. A convention to nominate candidates for public office to be voted for by the electors of the entire state will be hereinafter in this chapter designated as a state convention, and a primary election for the election of delegates to such convention will be hereinafter in this chapter designated as a state primary. Conventions to nominate candidates for representatives in congress, and members of the board of equalization, or railroad commissioners, or for senators and assemblymen, or judges of the superior court, from districts including more than one county, will be herein-

after in this chapter designated as district conventions, and a primary election to elect delegates to such conventions will be hereinafter in this chapter designated as a district primary. Conventions to nominate candidates for county, or city and county officers, judges of the superior court, or justices of the peace in any city and county, and members of the senate and assembly representing districts wholly within one county or city and county, supervisors and all township officers, will be hereinafter in this chapter designated as local conventions, and a primary election to elect delegates to such conventions will be hereinafter in this chapter designated as a local primary. A convention to nominate candidates for city or town officers will be hereinafter in this chapter designated as a city convention, and a primary election to elect delegates to such conventions will be hereinafter in this chapter designated as a city primary. En. March 12, 1872. Rep. 1899, 56; 1901, 606. En. Stats. 1901, 606.

§ 1359. To be conducted as other elections. Elections herein provided for and known and designated as primary elections shall be conducted, managed, and controlled as to selection of precinct officers, their powers and duties, publication of notices, use of original affidavits of registration, indexes, and supplements thereto, challenging of voters, voting booths, printing and use of the ballots, cards of instruction, ascertainment of results, time for opening and closing of the polls, and all other details, in the same manner, and subject to the same regulations as are elections for state, district, county, city and county, city, town, and local officers as far as applicable, except as otherwise provided in this chapter; provided, that sample ballots shall not be printed or distributed, and that there shall be but one ballot box at each polling place; also, provided, that there shall be printed for each primary election precinct only as many ballots for each participating political party as there are names appearing on the register, indexes or supplements thereto as persons entitled to vote thereat; also, provided, that the compensation which shall be allowed to each primary precinct election officer shall not exceed four dollars per day, and it shall be the duty of every person so chosen to act as such primary precinct election officer at such primary election to perform the services required of him

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in such capacity. That the primary precinct election officers shall be an inspector, two judges, two clerks, and one ballot clerk, for each primary election precinct, who must have been registered electors thereof for at least thirty days prior to their appointment; provided, that the same person shall not, without his consent, be compelled to serve as such primary precinct election officer more than once in every two years. En. March 12, 1872. **Rep.** 1899, 56; 1901, 606. En. Stats. 1901, 607. **Am'd.** 1903, 118.

§ 1360. Under what control—Expenses—Returns. All state, district, and local primaries, held under the provisions of this chapter, shall be under the control of the board of election commissioners of each county, or city and county, respectively, and shall be a county, or city and county charge, respectively, and the expense of conducting city primaries shall be a city or town charge, and under the control of the city council, trustees, or governing body of any city or town; provided, that no expense of holding any convention shall be a public charge; and provided further, that all necessary expenses incurred by the secretary of state under this chapter shall be a state charge, and payable out of the general fund. The boards of supervisors of counties, and of any city and county, and the city council or board of trustees, or other governing body of any city or town, shall appropriate from the general funds of the county, city, city and county, city or town, as the case may be, sufficient sums of money to pay the necessary expenses of conducting the primary elections herein specified, and it shall be the duty of the proper officers to pay such expenses where the same are either a county, city and county, or city or town charge, respectively. The board of election commissioners of any county, or city and county, and the city councils or boards of trustees of cities and towns, as to all elections for delegates to conventions held under their control as the case may be, under the provisions of this chapter, shall forthwith, after any such election, canvass the returns and shall, within three days, issue to the persons elected as delegates to the respective party conventions certificates stating such fact, and thereupon such persons shall constitute the delegates of the party, and shall be entitled to sit and act in the respective party

conventions to which they are elected. En. March 12, 1872. Rep. 1899, 56; 1901, 606. En. Stats. 1901, 607.

§ 1361. Parties entitled to designation upon official ballot—Petitions. All political parties which, at the last election prior to any ensuing primary election herein provided for, polled at least three per cent of the entire vote of the state, county, district, city and county, city or town, or other political division for which a primary election is to be held under the provisions of this chapter, or which, in the case of any county, city and county, township, city or district wherein no general election shall have been held after its organization, shall have polled at least three per cent of the votes cast in the precincts composing such county, city and county, township, city or district, shall be entitled to a designation and place upon the official ballot to be used in all elections for delegates under this chapter, upon complying with the provisions of this section. All other political organizations which shall file with the proper officer or board of election commissioners the petition required in such behalf by the provisions of this chapter shall be entitled to participate in such primary election. Where a state or district convention is to be held, the governing committee of any political party for such territory shall, at least forty days prior to the dates of the state or district primary, file with the secretary of state, a writing, designated in this chapter as a petition, authenticated by the chairman and secretary, or other governing officers of such party state or district committee, setting forth the name of such party, that such writing is authenticated by the proper officers of the party committee, that it is the intention of such party to hold a state or district convention or conventions, for the purpose of making a nomination or nominations of candidates for public offices to be voted for at the next ensuing general election, or at any special election within the same territory which may be called within two years after the primary election, for the purpose of filling any vacancy in any public office for which such convention is entitled to make nominations, and requesting that a place be given to it upon the official primary election ballot where such primary election is to be held under the provisions of this chapter. Where a state convention is to be held, the respective petitions as filed shall provide that the same

delegates composing the state convention, who reside within the respective railroad commissioner districts and state equalization districts, shall be the delegates to the respective conventions to nominate candidates for railroad commissioners, and for members of the state board of equalization. And the petitions filed by congressional district committees, where there are such committees, shall state whether the delegates elected to a state convention, within such congressional district, shall be the delegates empowered to nominate a candidate for congress in such district, or whether separate delegates shall be selected in such congressional district for that purpose. And petitions filed by senatorial or assembly district committees, from districts including more than one county, where there are such district committees, shall state whether the same delegates to the state convention residing within such district shall nominate the candidate for senator or assemblyman in such district, or whether separate delegates shall be elected in such district for that purpose. And unless there shall be such district petitions providing for such separate delegates in the cases aforesaid, such district candidates for congress, state senator, or assemblyman shall be nominated by the delegates to the state convention who come from and reside within such respective districts. Such petition must further state the number of delegates who will compose the convention, and specify the basis of the apportionment upon which they are to be elected. Such petition may either make such apportionment in detail, or may leave such apportionment in detail to the party committees of the respective counties, or of any city and county in this state; provided, however, that any apportionment made in accordance with the provisions of this chapter must be made on the same basis for each subdivision, and must not be to, or the election by, territory not included in the same assembly district; nor such as to allow voters in different counties to vote for the same delegate or delegates; such petition must be duly verified as to the truth of such matters by the chairman or secretary, or a governing officer of such party, before an officer authorized to administer an oath in this state. If the petition be by a political organization which has not previously polled three per cent of the vote as heretofore mentioned and

specified in this section, then and in that event such petition must be signed by the electors residing within the state, district, or political division, for which candidates are to be presented, equal in number to at least three per cent of the entire vote cast at the last preceding election in the state, district, or political division, for which nominations are to be made, and must be verified as required by section eleven hundred and eighty-eight of the Political Code. Such signatures need not all be appended to one paper, but shall have added thereto the address as required by the last-named section. Such petition may also contain the names of any committee of said organization and of the officers of such committee for the territory to which said petition relates, with the address of such officers. Where local conventions are to be held such petitions must be authenticated in the same manner as above provided for state or district conventions by the governing officers or committee of the party for the county, city, or city and county, or by signers to a verified petition as hereinbefore specified, and must set forth the same things as hereinbefore required in a petition for participation in a state or district primary election. Such last-named petition must further specify whether or not the same delegates are to serve in the local convention, and also in subdivisions of such local conventions, for the purpose of nominating state senators, members of the assembly, judges of the superior court, supervisors or other township and local officers, or whether different sets of delegates are to be elected to such local conventions, and must specify in detail the apportionment of delegates, whether by assembly districts, or by wards, or by primary election precincts, or combinations thereof not to exceed an assembly district, for each proposed convention, and the basis of aportionment shall be the same as hereinbefore provided; provided, however, that only such delegates as have been elected from any senatorial or assembly district shall make the nomination of senator or assemblyman from such district, respectively. If the apportionment last mentioned is not contained in any petition filed, then such apportionment shall be made by the board of election commissioners with whom the petition is filed before the publication provided for in section thirteen hundred and sixty-three of this code. Such last-named petition for

participation in a local primary election must be filed with the board of election commissioners of the county, or city and county, at least thirty days before the date of such primary election. Where a city primary is to be held such petition must set forth the same facts required to be set forth in a petition for participation in a local primary election, must be governed by the same rules, and must be executed by the governing officers or committee of the party for such city or town, and in like manner and time filed with the governing body of such city or town, or by signers to a verified petition as hereinbefore specified. Such last-named petition for participation in a city primary must specify in detail the apportionment of delegates, whether by assembly districts, or by wards, or by primary election precincts, or combinations thereof not to exceed an assembly district, where the same have already been established. En. March 12, 1872. **Rep.** 1899, 56; 1901, 606. En. Stats. 1901, 608.

§ 1362. When shall be held. Primary elections shall be held in this state under the provisions of this chapter on the following dates, that is to say: On the second Tuesday in the month of August in each and every even-numbered year a primary election shall be held for the election of delegates to all state, district, and local conventions for the purpose of making nominations for officers to be voted for at the next ensuing general election, and in case of any county, or city and county, where at the date of the taking effect of this chapter, or thereafter, there shall be held a general election for county, city, or city and county, officers, in odd-numbered years, then a primary election shall be held in such county, city, or city and county, on the second Tuesday in August in each and every odd-numbered year for the purpose of electing delegates to any local convention for the purpose of making nominations for candidates for county, or city and county, officers to be voted for at the next ensuing election. In any year when by law an election is to be held in any city or town in this state for the purpose of electing city or town officers, primary elections for the election of delegates to such city conventions shall be held on the sixth Tuesday next preceding the election for such public officers in such city or town; provided, that where any city election of city officers is to be held on the same day as any general or county

election for state, district, county, or township officers, then the delegates to any such city convention shall be elected from the proper territory at the state or local primary in such county. En. March 12, 1872. Rep. 1899, 56; 1901, 606; En. Stats. 1901, 610.

§ 1363. Secretary of state to transmit copies of petitions —Apportionment of delegates—Notice. Upon the expiration of the time allowed by law for the filing of the petitions with the secretary of state, as herein provided, he must transmit copies of such petitions to the various election commissioners of the counties or of any city and county, in which such primaries are to be held under the provisions of this chapter. And the secretary of state shall forthwith in writing notify the governing body of each political party which has theretofore filed with him such petition, of the transmission of such copies of its petition to the election commissioners of such various counties, or cities and counties, within the state; provided, that when the petition filed is by a political party or organization, which has not previously polled three per cent of the vote as in this chapter specified, such notice may be given to any person designated in said petition as the person to whom such notice may be sent, or to any officer of any committee whose name and address is contained in said petition. Within ten days after the receipt of such notice, where its petition theretofore filed with the secretary of state does not make the apportionment of delegates in detail, the proper party committees of the petitioning political party in the respective counties, or any city and county in this state, shall file with the election commissioners of the respective county, or city and county, its apportionment of delegates within such county, or city and county. At least fifteen days before the holding of a state, district, or local primary, under the provisions of this chapter, the election commissioners of each county, or city and county, and in like manner before the holding of a city primary, under the provisions of this chapter, the board of trustees or governing body of such city shall publish a notice thereof for three successive publications in at least one daily newspaper published in such city, county, or city and county, as the case may be. If there be no daily newspaper in any city, county, or city and county, then in some weekly newspaper for at least two successive

publications, and if there be neither daily nor weekly newspapers in any city, county, or city and county, respectively, then for like periods in some daily or weekly newspaper in an adjoining city, county, or city and county, as the case may be. Such notice shall contain the names of the political parties which are entitled to nominate candidates for public offices by convention, and which are entitled to participate in the primary election next ensuing, the offices for which nominations may be made, a designation of precincts, the location of polling places, the names of primary election officers, together with the number of delegates and the apportionment thereof, which each party is entitled to elect, from each assembly district, ward, township, or parts of wards or townships, or other territorial district, as such apportionments are made and set forth in the various petitions of the different political parties as in this chapter provided, or as made by the election commissioners when not made by the proper petition or committee. En. March 12, 1872. Rep. 1899, 56; 1901, 606. En. Stats. 1901, 611.

§ 1364. **Election officers—Precincts.** Prior to each state or district primary held under the provisions of this chapter, and upon receipt of the notice from the secretary of state, the election commissioners shall appoint the proper number of primary election officers for each primary election precinct which shall be then, or shall have been theretofore, established by them. The appointment of primary election officers, and the establishment of primary election precincts for the foregoing and for all other primaries shall be made by the proper board of election commissioners sufficiently previous in point of time to permit the apportionment of delegates and the publications herein directed. The election commissioners may combine not more than three contiguous general election precincts into one primary election precinct; provided, that no primary election precinct shall embrace territory not in the same assembly or supervisoral district; and provided further, that where any city, town, or city and county, is by law or charter divided into wards, no primary election precinct in such city, town, or city and county, shall embrace territory not included in the same ward, and in the same supervisoral and in the same assembly district. En. March 12, 1872. Rep. 1899, 56; 1901, 606. En. Stats. 1901, 612.

§ 1365. **Ballots.** The ballots for the primary election shall be printed and provided in as many lots for each precinct as there are parties entitled to participate therein. At the top of each and every ballot of each lot and on a strip extending beyond the top of the ballot proper, so as to be seen with the ballot folded, and without unfolding it, shall be printed in bold type the name of the party for which that particular lot of ballots was printed. The only other matter to be printed on any ballot shall consist of appropriate directions for voting the ballot, and the designations of the various conventions to which delegates are to be elected, and the number of delegates which the parties operating coextensively within each division thereof is entitled to elect to each convention at the particular precinct where said ballot is to be used; all of which shall be concisely and briefly set forth. The voter may write the names of his choice for delegates with pen or pencil, or he may attach in the proper place on the ballot with any adhesive substance a slip of white paper containing the names of his choice; provided, that on any such slip there may be printed a designation of the convention to which the delegates are to be elected. Each voter may vote for as many names for delegates as may be entitled to be elected to his respective party convention, or conventions, from the primary precinct at which he votes, under and by virtue of the apportionment hereinbefore determined by the various party committees, and the directions in pursuance therewith appearing on said ballot. Any ballot upon which any names appear for delegates to conventions of more than one party shall be disregarded. Nor shall any ballot contain names of any delegates to more than one state convention, or more than one district convention, or more than one local convention, or more than one city convention; nor shall any of the printed matter placed on any ballot by legal authority be changed, erased, or interlined. Any ballot not conforming hereto shall be disregarded. In case of a tie vote between candidates for delegates, so that it cannot be determined who is elected, such fact must be reported and certified to such candidates and to the secretary of the proper party committee, if such party shall have polled at least three per cent of the entire vote as in this chapter mentioned, and if such party shall not have polled said three per cent,

then to the person designated in the petition filed by such party, and the convention may determine the respective rights of such candidates to sit or act in the convention. Nothing herein shall be held to prevent the election of the same person to more than one convention of the same party where one of the conventions is held for a political division including the other, or where other separate nominating conventions are legally held in each.

The ballots for each party shall be substantially in the following form:

(Insert name of party) PARTY.

Primary Election, Tuesday, August ——, 1902.

..... County.

..... Assembly (Ward, Township or other Territorial) District.

Election Precinct No. .....

Vote for delegates to the respective conventions of one party only.

(If any party committee calls for election of different delegates to district, senatorial, assembly or other subdivisions of local conventions, or if delegates are to be elected to city conventions, then have ballots to show.)

(Insert name of party) DELEGATES.

For delegates to (insert name of party) state and district conventions. Vote for eight delegates only.

1 .....
2 .....
3 .....
4 .....
5 .....
6 .....
7 .....
8 .....

For delegates to (insert name of party) local (city, county, or city and county) conventions and subdivisions thereof. Vote for five delegates only.

1 .....
2 .....
3 .....
4 .....
5 .....

En. March 12, 1872. Rep. 1899, 56; 1901, 606. En. Stats. 1901, 612.

§ 1366. Qualifications and registration of voters. The qualifications and registration of voters and the privileges of electors to attend the polls at primary elections shall be subject to the same tests and governed by the same rules and regulations as are in the constitution and Political Code of this state established and prescribed for general elections; and the same officers who furnish the original affidavits of registration, indexes and supplements thereto, for general elections, as provided for in this code, shall furnish them for use at primary elections. It shall be the duty of the proper officers to furnish the original affidavits of registration, indexes and supplements thereto, for use at primary elections, which shall show the names of all voters entitled to vote at such elections; provided, that where a new registration pursuant to law is not completed in point of time sufficient to permit of its use at the next ensuing primary election, then the original affidavits of registration and indexes used at the last general election in any county, or city and county, in this state, may be used at any primary election, together with the original affidavits of registration since the last election and supplemental indexes, showing all additional registrations, changes and corrections made since the last general registration, completed to and including the twentieth day prior to the primary, which shall be the last day on which any person may register or transfer his registration, so as to entitle him to vote at such primary. And the election commissioners shall furnish, at least five days prior to any primary election, complete sets of indexes of the register and supplements thereto, for each precinct in which a primary election is to be held, to the secretary of each political organization participating in the primary. It is the duty of the county clerk to furnish, at least forty-eight hours prior to the day on which any primary election is held, under the provisions of this chapter, to the city or town clerk of the city or town in which a primary is to be held, all the original affidavits of registration, indexes and supplements thereto, for use by the officers of election at all the precincts at said primary election. City and town clerks are required to return to the county clerk, within twenty-four hours after the closing of the polls,

all original affidavits of registration by them received from the county clerk. En. Stats. 1899, 48. Rep. 1901, 606. En. Stats. 1901, 614. Am'd. 1903, 49.

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§ 1367. **Manner of voting—Challenge.** A person desiring to vote at any primary election on behalf of any party or for delegates to any convention, shall write his name and address on the roster of voters, or where unable to write shall have the same written thereon for him as provided by law, and he must also write, or where unable to write, have written for him on such roster, opposite such name and address, the name of the political party for whose candidates he in good faith intends to vote at the election for which the primary is held. The ballot clerk shall thereupon announce his name and address and the name of the political party for whose candidates he intends to vote. The voter thereby declares as a test of his right to vote a bona fide present intention of supporting the nominees of such political party or organization at the next ensuing election, and any voter may be challenged and his right to vote may be withheld unless he make oath or affirmation as to his bona fide present intention to support the nominees of the convention to which delegates are to be so elected for such political party or organization. He may likewise be challenged for any cause that would disqualify a voter at a general election. If not challenged, or if the challenge is overruled or withdrawn, he shall receive from the ballot clerk a ballot having the designation and heading of the political party whose name was written on such roster, by or for him, and he may be permitted to prepare and vote the same. En. Stats. 1899, 48. Rep. 1901, 606. En. Stats. 1901, 615.

§ 1368. **Legality of conventions.** No convention shall be illegal because of a failure of any precinct or political division to elect delegates thereto. A majority of delegates chosen shall constitute a quorum, and each convention shall be the judge of the election and qualification of its members, and no convention shall be recognized as in law entitled to make nominations unless the delegates thereto representing the territory or political division where the provisions of this chapter are mandatory, or in force and effect, were elected under and by virtue of the provisions of this chapter. En. Stats. 1899, 48. Rep. 1901, 606. En. Stats. 1901, 615.

§ 1369. List of delegates holding credentials. Immediately upon making out the credentials of any delegates elected under this law, the clerk shall mail to the secretary of each political party or organization which participated in the primary, a complete list of all delegates to whom credentials shall have been given as herein provided, and said clerk must, in proper book to be kept by him, record the names of all delegates elected, with the vote received by each, specifying those to whom credentials have been given, stating when and where such credentials were issued, delivered or mailed; and if any delegate entitled to credentials shall not have received his credentials, or shall have lost the same, said clerk must, upon request, issue a new credential to such delegate, which must be stamped "duplicate." En. Stats. 1899, 49. Rep. 1901, 606. En. Stats. 1901, 615.

§ 1370. Penalty for failure to act as primary officer. Any person so chosen to act as a primary election officer, who shall willfully fail or refuse to act in the capacity for which he is chosen, without having been excused therefrom, shall be liable to a civil suit in the sum of twenty-five dollars, in liquidated damages, to be brought by the district attorney, in the name of the people of the state of California, which sum, when collected, together with costs, shall be paid into the treasury of the county, or city and county. En. Stats. 1899, 49. Rep. 1901, 601. En. Stats. 1901, 615.

§ 1371. Election commissioners, who may act. When there shall not be in any city, county, or city and county, any board of election commissioners as such, then all duties enjoined and powers conferred herein upon such board of election commissioners, shall be enjoined and conferred upon and performed by the common council or board of trustees of a city, or board of supervisors of a county, or city and county, in each case respectively, as hereinbefore specified; provided, however, that where this chapter is made mandatory, or is in force and effect in any county which contains within its limits a city or cities in which this chapter is also mandatory, or in force and effect, then and in that event whenever a primary under this chapter other than a city primary is to be held in such county, in the whole or any part of such county, outside of as well as within the corporate limits of such city or

cities therein, the board of supervisors of such county shall be the election commissioners, having the exclusive charge and control of such primary under the provisions of this chapter. En. Stats. 1899, 51. Rep. 1901, 606. En. Stats. 1901, 616.

§ 1372. This chapter, where mandatory and where optional. This chapter and each and every provision thereof shall be obligatory and mandatory in cities, and cities and counties, having a population of over seven thousand five hundred, according to the last general census of the government of the United States, and for this chapter and its purposes the population of the cities, and cities and counties, in which this act is hereby made obligatory and mandatory, is hereby declared to be as follows:

The city and county of San Francisco, three hundred and forty-two thousand seven hundred and eighty-two.

The city of Los Angeles, one hundred and two thousand four hundred and seventy-nine.

The city of Oakland, sixty-six thousand nine hundred and sixty.

The city of Sacramento, twenty-nine thousand two hundred and eighty-two.

The city of San Jose, twenty-one thousand five hundred.

The city of San Diego, seventeen thousand seven hundred.

The city of Stockton, seventeen thousand five hundred and six.

The city of Alameda, sixteen thousand four hundred and sixty-four.

The town of Berkeley, thirteen thousand two hundred and fourteen.

The city of Fresno, twelve thousand four hundred and seventy.

The city of Pasadena, nine thousand one hundred and seventeen.

The city of Vallejo, seven thousand nine hundred and sixty-five.

In all other portions of the respective counties in which the cities above named are respectively situate, and in all other cities, and cities and counties, and in all other counties of the state, and in all political subdivisions of a lesser population, this chapter shall be optional, and shall be in

force therein only upon and after a majority vote therefor by the electors of such city, or city and county, or county, or political subdivision of lesser population, at a general or special election, at which the question shall have been submitted in manner as follows: When a petition signed by electors of such city, city and county, county, or political subdivision of lesser population, in number equal to one half of the total vote cast in such city, city and county, county, or political subdivision of lesser population, at the last preceding general election, is filed with the legislative body or council of a city, in case such election is to be held in such city, or in other cases with the board of supervisors of the county wherein such election is to be held, asking that such question be submitted to a vote of such electors, the said legislative body, council, or board of supervisors shall by proclamation submit such question to the vote of such electors at the next general election; provided, that if it be demanded in such petition that the question be submitted at a special election, it shall be so submitted, and such special election shall be held within thirty days after the first regular meeting of such legislative body, council, or board of supervisors, after the filing of such petition. The ballots used at such general or special election shall contain the words "For the Primary Law," and "Against the Primary Law." Such election shall be conducted, and the notices thereof shall be given, and the returns canvassed in all respects as provided by law for the conducting of general elections and the canvassing the returns thereof. In case a majority of the votes cast at such election on such question shall be for the primary law, the provisions of this chapter shall take effect and be in force forthwith, in said city, city and county, county, or political subdivision of lesser population, and shall remain in force therein until rendered inapplicable thereto by a similar vote.

But all delegates elected under the provisions of this chapter before such last-mentioned vote, shall serve in the respective conventions to which they were elected, as if said last-mentioned vote had not been had. Every board of supervisors or other legislative body or council acting under the provisions of this section shall forthwith send to the secretary of state a certified copy of all its decisions and declarations hereunder; the secretary of state shall

file the same in his office, without charge, and he shall cause the same to be published as an appendix to the statutes and amendments to the codes enacted at the succeeding session of the legislature. En. Stats. 1899, 52. Rep. 1901, 606. En. Stats. 1901, 616.

§ 1373. Presidential primary in May. In the year nineteen hundred and four, and every four years thereafter, a primary election shall be held in the territory and political subdivisions where the provisions of this chapter are mandatory or in force, on the first Tuesday in the month of May, for the purpose of choosing delegates to state and district conventions to select delegates to a national convention, and such primary election shall be conducted in accordance therewith, and all of said provisions shall relate thereto; provided, that where the national convention of any political party shall be called to assemble prior to May fifteenth of such year to nominate candidates for president and vice-president of the United States upon a day in any year where such a president and vice-president are to be elected, then and in such event such political party or organization may select its delegates to such national convention in such manner as the state governing committee of such political party or organization shall prescribe. En. Stats. 1899, 52. Rep. 1901, 606. En. Stats. 1901, 617.

§ 1374. Ballots, preservation of—Contests. Wherever the provisions of this chapter are in force and effect, the ballots for the respective political parties cast at the primary election must, after being counted, be sealed in separate envelopes in the manner provided for sealing and certifying ballots at general elections, and each such package must have written or printed thereon plainly the designation of the political party and the number of the primary precinct where the same were cast. Such ballots must not be destroyed until after the adjournment of the political convention for which delegates were elected by such ballots. If there shall be a contest before any political convention and the contestant shall have in writing charged that the ballots in a designated precinct or precincts were not correctly counted, and that a recount thereof would show the election of the contestant as a delegate, then any committee to which such convention

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has referred such contest shall have power to issue a subpœna directed to the election commissioners or body having charge and custody of such ballots, or to the chairman or clerk, secretary, or registrar of voters thereof, commanding such person or persons to forthwith produce the envelopes containing the ballots for such party cast in the precinct or precincts designated in such subpœna, and if such subpœna shall be accompanied by a tender of the witness and mileage fees allowed by law in civil actions, the person or persons to whom such subpœna is directed must forthwith take such ballots so sealed before such committee, or send the same so sealed by some person named over his signature as the bearer thereof, who shall forthwith take such ballots sealed before such committee. Such subpœna may be served by telegraphic copy, telegraphed by the chairman or secretary of such committee, and any person disobeying such subpœna shall, upon the application of such committee to the superior court of the county where such subpœna was properly served, be cited by said court to show cause why he should not be punished for contempt of such committee, and if he be found guilty of such disobedience he may be punished for such contempt by such court in the same manner as provided for punishment for contempt for disobedience to a subpœna in a civil action. If when such ballots are produced before such committee it shall resolve that the same be recounted, it may order the seal to be broken, and may recount such ballots for any precinct and declare the result thereof, and report the same to such convention, and such ballots be re-enclosed in the envelope from which they were taken, and be returned to the place from which they came. En. Stats. 1899, 53. Rep. 1901, 606. En. Stats. 1901, 618.

§ 1375. Vacancies, additional vote. If any delegate elected under the provisions of this chapter shall die before, or from any cause shall be unable to attend upon, the convention to which he was elected convenes, then the other delegates thereto who were voted for in the same territory as such delegate, or if there is no other delegate remaining from said territory, then the other delegates thereto who were voted for in the same assembly district, shall have power to determine by a majority vote which of such delegates may cast an additional vote

in such convention, and thereupon the delegate so named may cast such additional vote in such convention. En. Stats. 1899, 54. Rep. 1901, 606. En. Stats. 1901, 619.

§ 1376. Registration of voters. (Repealed.) En. Stats. 1899, 55. Rep. 1901, 606.

§ 1377. Delegates, election of. (Repealed.) En. Stats. 1899, 55. Rep. 1901, 606.

§ 1378. Delegates, lists and credentials. (Repealed.) En. Stats. 1899, 55. Rep. 1901, 606.

§ 1379. Offenses against. (Repealed.) En. 1899, 55. Am'd. 1899, 56. Rep. 1901, 606.

§ 1380. Proceedings where no board of election commissioners. (Repealed.) En. 1899, 55. Rep. 1901, 606.

Part 3

TITLE III.

EDUCATION.

Chapter I. University of California, §§ 1385-1477.
II. State Normal School, §§ 1487-1507.
III. Public Schools, §§ 1517-1891.

CHAPTER I.

UNIVERSITY OF CALIFORNIA.

Article I. General Provisions Relating to the University, §§ 1385-1405.
II. Endowment of the University, § 1415.
III. Regents of the University, §§ 1425-1439.
IV. Secretary of the Board of Regents, §§ 1449-1451.
V. Academic Senate of the University, §§ 1461-1463.
VI. University Cadets, §§ 1473-1477.

ARTICLE I.

GENERAL PROVISIONS RELATING TO THE UNIVERSITY.

§ 1385. Object of university.
§ 1386. Colleges to be maintained.
§ 1387. Scope of college of letters.
§ 1388. Course of instruction.
§ 1389. President of university.
§ 1390. Duties of president.
§ 1391. Government and discipline.
§ 1392. Students.
§ 1393. Fees and rates of tuition.
§ 1394. Same.
§ 1395. Free scholarship.
§ 1396. Colleges may be affiliated with university.

§ 1397. Annual examination for degrees.
§ 1398. Same.
§ 1399. Same.
§ 1400. Degrees to graduates of affiliated colleges.
§ 1401. Certificates of proficiency.
§ 1402. Degrees.
§ 1403. Degrees in colleges of letters.
§ 1404. System of manual labor in connection with agricultural college.
§ 1405. Sectarian, etc., tests prohibited.

§ 1385. Object of university. The University of California, located in Alameda County, has for its object general instruction and education in all the departments of science, literature, art, industrial and professional pursuits, and special instruction for the professions of agriculture, the mechanic arts, mining, military science, civil engineering, law, medicine, and commerce. En. March 12, 1872.

Cal.Rep.Cit. 123, 618.

University of California—declared a public trust: Const. Cal., art. IX, sec. 9.

Organic act creating university: Stats. 1868, p. 248. Am'd. 1871-2, p. 655. The code commissioners say of this section: "Probably repealed by the code, but, if so, revived and made irrepealable by section 9, article IX of the constitution."

Acts relating to the state university: See General Laws, title University of California.

§ 1386. Colleges to be maintained. There must be maintained in the university:

1. A college of letters.

2. A college or colleges of science, including agriculture, mechanics, mining, engineering, chemistry, and such other specialties as the board of regents may determine.

3. College of medicine and law.

4. Such other colleges as the board of regents may establish. En. March 12, 1872. Am'd. 1873-4, 31.

Subd. 3. Colleges of medicine and law, affiliation of: Post, sec. 1396.

§ 1387. Scope of college of letters. The college of letters must embrace a liberal course of instruction in language, literature and philosophy. En. March 12, 1872.

§ 1388. Course of instruction. Each full course of instruction consists of its appropriate studies and courses,

to be determined by the board of regents. En. March 12, 1872. Am'd. 1873-4, 31.

§ 1389. **President of university.** The president of the university is the executive head of the institution in all its departments, except as herein otherwise provided. En. March 12, 1872.

§ 1390. **Duties of president.** He must, subject to the board of regents, give general direction to the practical affairs of the several colleges, and in the recess of the board of regents may remove any employee or subordinate officer not a member of any faculty, and supply for the time being any vacancies thus created; and until the regents otherwise direct he is charged with the duties of one of the professorships. En. March 12, 1872.

§ 1391. **Government and discipline.** The immediate government of the several colleges is intrusted to their respective faculties, each of which must have its own organization, regulate its own affairs, and may recommend the course of study and the text-books to be used. En. March 12, 1872.

§ 1392. **Students.** Any resident of California of the age of fourteen years or upwards, of approved moral character, may enter himself in the university as a student at large, and receive tuition in any branches of instruction at the time when the same are given in their regular course, on such terms as the board of regents may prescribe. En. March 12, 1872.

Any resident of California—no person to be debarred admission on account of sex: Const. Cal., art. IX, sec. 9.

§ 1393. **Fees and rates of tuition.** An admission fee and rate of tuition fixed by the board of regents must be required of each pupil, except as herein otherwise provided. En. March 12, 1872.

§ 1394. **Same.** As soon as the income of the university shall permit, admission and tuition must be free to all residents of the state; and the regents must so apportion the representation of students according to population that all portions of the state may enjoy equal privileges therein. En. March 12, 1872.

§ 1395. Free scholarship. If approved by the board of regents, scholarships may be established in the university by any persons for the purpose of private benefaction or of affording tuition in any course of the university, free from the ordinary charges, to any scholar in the public schools of the state who may distinguish himself in study, according to the recommendation of his teachers, and who passes the examination required for the grade at which he wishes to enter the university. En. March 12, 1872.

§ 1396. Colleges may be affiliated with university. The board of regents may affiliate with the university any incorporated college of medicine, law, or other special course of instruction, upon such terms as may be deemed expedient; and such college may retain the control of its own property, have its own board of trustees, faculties, and presidents, respectively; and the students of such colleges, recommended by the respective faculties thereof, may receive from the university the degrees of those colleges. En. March 12, 1872.

Hastings College of Law—acts relating to: See General Laws, title Hastings Law School. Women admitted as students: See Const. Cal., art. IX, sec. 9.

Medical department of the university of California to be called the "Toland": Stats. 1881, p. 24.

§ 1397. Annual examination for degrees. The examinations for degrees must be annual. Students who have passed not less than a year as residents in any college, academy, or school in this state, and who, after examination by the faculty thereof, are recommended by them as proficient candidates for any degree in any regular course of the university, must be examined therefor at the annual examination; and on passing such examination may receive the degree and diploma for that course, and rank as graduates. En. March 12, 1872.

§ 1398. Same. All students of the university who have been residents thereat for not less than one year, and all graduates thereof, may present themselves for examination in any course at the annual examinations, and, on passing such examination, may receive the degree and diploma of that course. En. March 12, 1872. Am'd. 1873-4, 31.

§ 1399. Same. Upon such examinations each professor and instructor of that course may cast one vote, by ballot, upon each application for recommendation to the board of regents for a degree. En. March 12, 1872.

§ 1400. Degrees to graduates of affiliated colleges. Graduates of the College of California, and of any incorporated college affiliated with the university, may receive the degrees from, and rank as graduates of the university. En. March 12, 1872.

§ 1401. Certificates of proficiency. The board of regents may also confer certificates of proficiency in any branch of study, upon such students of the university as upon examination are found entitled to the same. En. March 12, 1872.

§ 1402. Degrees. The proper degree of each college must be conferred at the end of the course upon such students as, having completed the same, are found proficient therein. En. March 12, 1872.

§ 1403. Degrees in colleges of letters. The degree of bachelor of arts, and afterwards the degree of master of arts, in usual course, must be conferred upon the graduates of the college of letters. En. March 12, 1872.

§ 1404. System of manual labor in connection with agricultural college. A system of moderate manual labor must be established in connection with the agricultural college, upon its agricultural and ornamental grounds, for practical education in agricultural and landscape gardening. En. March 12, 1872.

§ 1405. Sectarian, etc., tests prohibited. No sectarian, political, or partisan test must ever be allowed or exercised in the appointment of regents, or in the election of professors, teachers, or other officers of the university, or in the admission of students thereto, or for any purpose whatsoever; nor must the majority of the board of regents be of any one religious sect or of no religious belief. En. March 12, 1872.

Independence of political or sectarian influence—preserved by Const. Cal., art. IX, sec. 9.

ARTICLE II.

ENDOWMENT OF THE UNIVERSITY.

§ 1415. Endowment.

§ 1415. Endowment. The endorsement [endowment] of the university is:

1. The proceeds of the sale of the seventy-two sections of land granted to the state for a seminary of learning.

2. The proceeds of the ten sections of land granted to the state for public buildings.

3. The income derived from the investments of the proceeds of the sale of the lands or of the scrip therefor, or of any part thereof, granted to this state for the endowment, support, and maintenance of at least one college where the leading object shall be—without excluding other scientific and classical studies, and including military tactics—to teach such branches of learning as are related to agriculture and the mechanic arts.

4. The income of the fund set apart by "An act for the endowment of the University of California," approved April second, eighteen hundred and seventy, which is continued in force.

6. The state of California, in its corporate capacity, may take by grant, gift, devise, or bequest, any property for the use of the university, and hold the same, and apply the funds arising therefrom, through the regents of the university, to the support of the university, as provided in article IX, section four, of the constitution.

7. The regents of the university, in their corporate capacity, may take, by grant, gift, devise, or bequest, any property for the use of the university, or of any college thereof, or of any professorship, chair, or scholarship therein, or for the library, an observatory, workshops, gardens, greenhouses, apparatus, a students' loan fund or any other purpose, appropriate to the university; and such property shall be taken, received, held, managed, and invested, and the proceeds thereof used, bestowed, and applied by the said regents for the purposes, provisions, and conditions prescribed by the respective grant, gift, devise, or bequest.

8. The regents of the university may invest any of the permanent funds of the university, which are now or here-

after may be in their custody, in productive, unincumbered real estate in this state, subject to the power of the legislature to control or change such investments, excepting such as, by the terms of their acquisition, must be otherwise invested.

9. If by the terms of any grant, gift, devise, or bequest, such as are described in the preceding sixth and seventh subdivisions, conditions are imposed which are impracticable under the provisions of the Civil Code, such grant, gift, devise, or bequest, shall not thereby fail, but such conditions shall be rejected, and the intent of the donor carried out as near as may be. En. March 12, 1872. Am'd. 1873-4, 31.

Cal.Rep.Cit. 63, 39; 123, 619.

Permanent endowment fund, consolidation of funds for, and use of income for current expenses: See Stats. 1878, p. 337.

University lands, selection and sale of: Post, secs. 3533-3556.

Subds. 1, 2. Proceeds of lands for seminary of learning and public buildings, disposition of: Post, sec. 3535.

Subd. 3. College of agriculture and mechanic arts, proceeds of sales of lands for: Post, sec. 3533. Interest inviolably appropriated for at least one: Const. Cal., art. IX, sec. 9.

Subd. 7. Regents to receive donations: See ante, sec. 1432, subd. 5.

ARTICLE III.

REGENTS OF THE UNIVERSITY.

§ 1425. University controlled by regents.
§ 1426. Sixteen regents appointed by the governor.
§ 1427. Six other regents, appointment of.
§ 1428. Vacancies.
§ 1429. President of the board.
§ 1430. Quorum.
§ 1431. Regents receive no compensation.
§ 1432. General powers and duties of regents.
§ 1433. Income arising from endowment at disposition of regents.
§ 1434. Fund to be set apart for current expenses.
§ 1435. Funds may be drawn from state treasury.
§ 1436. Construction of buildings.
§ 1437. Same.
§ 1438. Same.
§ 1439. Temporary buildings.

§ 1425. University controlled by regents. The university is under the control of a board of regents, consisting

of twenty-two members; but the president of the university, for the time being, shall be a member of the board of regents, by virtue of his office. En. March 12, 1872. Am'd. 1873-4, 33.

Regents of university—are civil executive officers: Ante, sec. 343.

§ 1426. Sixteen regents appointed by the governor. Sixteen members of the board are appointed by the governor, with the advice and consent of the senate. Their term of office is sixteen years. En. March 12, 1872.

§ 1427. Six other regents, appointment of. Six members of the board hold by virtue of other offices, as provided in section 353. En. March 12, 1872.

Ex officio regents: Ante, sec. 353.

§ 1428. Vacancies. Whenever a vacancy occurs in the board, the governor must appoint some person to fill it, and the person so appointed holds for the remainder of the term. En. March 12, 1872.

§ 1429. President of the board. The governor is president of the board. En. March 12, 1872.

§ 1430. Quorum. Seven members constitute a quorum of the board. En. March 12, 1872.

§ 1431. Regents receive no compensation. The members receive no compensation. En. March 12, 1872.

§ 1432. General powers and duties of regents. The powers and duties of the board of regents are as follows:

1. To meet at such times and places as their rules may prescribe, or at the call of the president of the board.

2. To control and manage the university and its property.

3. To prescribe rules for their own government and for the government of the university.

4. To adopt and prescribe rules for the government and discipline of the cadets.

5. To receive, in the name of the state, or of the board of regents, as the case may be, all property donated to the university.

6. To choose a president of the university, the pro-

fessors, and other officers and employees of the university, prescribe their duties, fix and provide for the payment of their salaries.

7. To fix the qualifications for admission to the benefits of the university.

8. To fix the admission fee and rates of tuition.

9. To appoint a secretary and treasurer, prescribe their duties, and fix and provide for the payment of their compensation.

10. To remove, at pleasure, any officer, professor, or employee of the university.

11. To supervise the general courses of instruction, and on the recommendation of the several faculties, prescribe the authorities and text-books to be used in the several colleges.

12. To confer such degrees, and grant such diplomas, as are usual in universities, or as they deem appropriate.

13. To establish and maintain a museum.

14. To establish and maintain a library.

15. To take immediate measures for the permanent improvement and planting of the university grounds.

16. To keep a record of all their proceedings.

17. Through the president of the university, to report to the governor the progress, condition, and wants of each of the colleges embraced in the university, the course of study in each, the number of professors and students, the amount of receipts and disbursements, together with the nature, cost, and results of all important investigations and experiments, and such other information as they may deem important. En. March 12, 1872. Am'd. 1873-4, 33.

Subd. 3. Government of the university.—Sale of intoxicating liquors within two miles of the university prohibited: Stats. 1873, p. 12. Superseded by Pen. Code, sec. 172, as amended April 3, 1876.

Subd. 5. To receive donations, specimens collected by state geological survey: Ante, sec. 550.

§ 1433. Income arising from endowment at disposition of regents. The entire income arising from the endowment is subject to the trusts at the disposition of the board of regents for the support of the university. En. March 12, 1872.

Consolidated perpetual endowment fund: Stats. 1878, p. 337.

§ 1434. Fund to be set apart for current expenses. For the current expenditures of the university specific sums of money must be set aside, out of the funds at their disposal, by the board of regents, which are subject to the warrants of the president of the board, drawn upon the treasurer of the university in pursuance of the orders of the board of regents. En. March 12, 1872.

Current expenses—income of consolidated perpetual endowment fund to be used for: Stats. 1878, p. 337.

§ 1435. Funds may be drawn from state treasury. All moneys which may at any time be in the state treasury, subject to the use of the board of regents, may be drawn therefrom by the president of the board, upon the order of the board, in favor of the treasurer of the university. En. March 12, 1872. Am'd. 1873-4, 35.

§ 1436. Construction of buildings. The regents must cause to be constructed such buildings as are needed for the use of the university. En. March 12, 1872.

§ 1437. Same. The plan adopted in the construction of buildings must provide separate buildings for separate uses, and so group all such buildings that a central building may bring the whole in harmony as part of one design. En. March 12, 1872.

§ 1438. Same. The construction and furnishing of the buildings must be let out to the lowest responsible bidder, after advertisement for not less than ten days in at least two daily newspapers published in the city of San Francisco; but the regents may reject any bid, and advertise anew. En. March 12, 1872.

§ 1439. Temporary buildings. Until the university buildings are ready for use the regents may make temporary arrangements for buildings at Oakland. En. March 12, 1872.

ARTICLE IV.

SECRETARY OF THE BOARD OF REGENTS.

§ 1449. Qualifications and choice of secretary.
§ 1450. Residence and duties of secretary.
§ 1451. Term and compensation.

§ 1449. Qualifications and choice of secretary. A practical agriculturist, competent to superintend the working of the agricultural farm and to discharge the duties of secretary of the board of regents, must be chosen by the board as their secretary. En. March 12, 1872.

§ 1450. Residence and duties of secretary. The secretary must:

1. Reside and keep his office at the seat of the university.

2. Keep a record of the transactions of the board of regents, which must be open at all times to the inspection of any citizen of this state.

3. Have the custody of all books, papers, documents, and other property which may be deposited in his office.

4. Keep and file all reports and communications which may be made to the university appertaining to education, science, art, husbandry, mechanics, or mining,

5. Address circulars to societies and others, soliciting information upon the latest and best modes of culture of the products adapted to the soil and climate of the state, and on all subjects connected with field culture, horticulture, stock-raising, and the dairy.

6. Correspond with established schools of mining and metallurgy in Europe, and obtain information respecting the improvements of mining machinery adapted to California.

7. Correspond with the patent office at Washington, and with the representatives of the government of the United States abroad, to procure contributions to agriculture from these sources; receive and distribute seeds, plants, shrubbery, and trees adapted to our climate and soils, for the purposes of experiment.

8. Obtain contributions to the museums and the library of the university.

9. Keep a correct account of all the executive acts of the president of the university.

10. Keep an accurate account of all moneys received into the treasury or paid therefrom.

11. Distribute the seeds, plants, trees, and shrubbery received by him, and not needed by the university, equally throughout the state, to farmers and others who will agree to cultivate them properly and return to the secretary's office a reasonable proportion of the products thereof, with a statement of the mode of cultivation, and such other information as may be necessary to ascertain their value for cultivation in the state.

12. Publish from time to time in the newspapers of the state, free of charge, information relating to agriculture, the mechanic arts, mining and metallurgy. En. March 12, 1872.

§ 1451. Term and compensation. The secretary holds office at the pleasure of and receives the compensation fixed by the board. En. March 12, 1872.

ARTICLE V.

ACADEMIC SENATE OF THE UNIVERSITY.

§ 1461. Academic senate.
§ 1462. General powers of.
§ 1463. Proceedings of.

§ 1461. Academic senate. The academic senate is composed of the faculties and instructors of the university. En. March 12, 1872.

Cal.Rep.Cit. 123, 619.

§ 1462. General powers of. The senate must conduct the general administration of the university, regulate the general and special courses of instruction, receive and determine all appeals from acts of discipline enforced by the faculty of any college, and exercise such other powers as the board of regents may confer upon it. En. March 12, 1872.

§ 1463. Proceedings of. Its proceedings must be conducted according to the rules of order adopted by it, and every person engaged in instruction in the university may participate in its discussions; but the right of voting is confined to the president and the professors. En. March 12, 1872.

ARTICLE VI.

UNIVERSITY CADETS.

§ 1473. University cadets.
§ 1474. Officers of.
§ 1475. Equipment of.
§ 1476. Retired officers of.
§ 1477. Report of military instructor.

§ 1473. University cadets. The students of the university must be organized into a body known as the "University Cadets." En. March 12, 1872.

§ 1474. Officers of. The officers of cadets, between and including the ranks of second lieutenant and colonel, must be selected by the chief military instructor, with the assent of the president of the university, and must be commissioned by the governor. En. March 12, 1872. Am'd. 1873-4, 35.

§ 1475. Equipment of. The adjutant-general of the state must issue such arms, munitions, accouterments, and equipments to the university cadets as the board of regents may require and the governor approve. En. March 12, 1872. Am'd. 1873-4, 35.

§ 1476. Retired officers of. Upon graduating or retiring from the university, such officers may resign their commissions or hold the same as retired officers of the university cadets, liable to be called into service by the governor in case of war, invasion, insurrection, or rebellion. En. March 12, 1872.

§ 1477. Report of military instructor. The military instructor must make quarterly reports to the adjutant-general of the state, showing the number, discipline, and equipments of the cadets. En. March 12, 1872.

CHAPTER II.

STATE NORMAL SCHOOL.

§ 1487. Object of school.
§ 1488. Under control of board of trustees.
§ 1489. General powers and duties of board.
§ 1490. Regular meetings of board.
§ 1491. Special meetings of board.
§ 1492. Time and place of meeting of joint board; powers and duties.
§ 1493. Apportionment of pupils. (Repealed.)

§ 1494. General qualifications for admission as pupils.
§ 1495. Pupils from state at large.
§ 1496. Pupils from other states.
§ 1497. Pupils to file certain declaration.
§ 1498. Competitive examinations before county boards. (Repealed.)
§ 1499. Manner of examination. (Repealed.)
§ 1500. Persons passing to be admitted as pupils, in what order. (Repealed.)
§ 1501. Principal to make annual report.
§ 1502. Principal may be permitted to attend county institutes.
§ 1503. Issuance of certificates or diplomas of normal school.
§ 1504. Secretary and board of trustees. (Repealed.)
§ 1505. Supervision by superintendent of public instruction.
§ 1506. Biennial appropriation to be made. (Repealed.)
§ 1507. Orders on controller, how drawn.

§ 1487. Object of school. The state normal schools have for their objects the education of teachers for the public schools of this state. En. March 12, 1872. Am'd. 1887, 137.

Cal.Rep.Cit. 86, 632.

See Const. Cal., art. IX, sec. 6, authorizing normal school to be established as part of the common-school system.

§ 1488. Under control of board of trustees. The state normal schools shall be under the management and control of boards of trustees, constituted as provided in section three hundred and fifty-four of the Political Code of the state of California. En. March 12, 1872. Am'd. 1887, 137.

State normal schools and trustees of: See ante, sec. 354.

Acts establishing and relating to normal schools: See post, Appendix, title Normal Schools.

§ 1489. General powers and duties of board. The powers and duties of each board of trustees are as follows: 1905 25

1. To elect a secretary, who shall receive such salary (not to exceed one hundred and fifty dollars per annum) as may be allowed by the board;

2. To prescribe rules for their government and the government of the school;

3. To prescribe rules for the report of officers and teachers of the school, and for visiting other schools and institutions;

4. To provide for the purchase of school apparatus, furniture, stationery, and text-books for the use of pupils;

5. To establish and maintain model and training schools

of the kindergarten, primary, and grammar grades, and require the students of the normal schools to teach and instruct classes therein;

6. To elect the president of the school, and to elect the teachers, upon their nomination by the president of the school, fix their salaries, and prescribe their duties; provided, that after the president or a teacher has served successfully and acceptably in the school for the period of two years prior to or after the passage of this act, his or her appointment thereafter may, at the discretion of the board of trustees, be made for a term not to exceed four years, unless removed for cause;

7. To control and expend all moneys appropriated for the support and maintenance of the school, and all moneys received for tuition or donations;

8. To cause a record of all their proceedings to be kept, which shall be open to public inspection at the school;

9. To keep open to public inspection an account of receipts and expenditures;

10. To annually report to the governor a statement of their transactions, and of all matters pertaining to the school;

11. To transmit with such report a copy of the president's annual report;

12. To revoke any diploma by them granted, on receiving satisfactory evidence that the holder thereof is addicted to drunkenness, is guilty of gross immorality, or is reputedly dishonest in his dealings; provided, that such person shall have at least thirty days' previous notice of such contemplated action, and shall, if he ask it, be heard in his own defense. En. March 12, 1872. Am'd. 1873-4, 75; 1887, 137; 1897, 234; 1899, 77.

Cal.Rep.Cit. 136, 215; 136, 217.

Acts establishing and relating to normal schools: See post, Appendix, title Normal Schools.

§ 1490. **Regular meetings of board.** Each board of trustees must hold two regular meetings in each year, and may hold special meetings, at the call of the secretary, when directed by the chairman. En. March 12, 1872. Am'd. 1887, 138.

§ 1491. **Special meetings of board.** The time and place of regular meetings must be fixed by the by-laws of the

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board. The secretary must give written notice of the time and place of special meetings to each member of the board. Each member shall be allowed his expenses in attending the meetings of the board, the bills to be audited the same as any bills for the maintenance of the school. En. March 12, 1872. Am'd. 1887, 138; 1897, 235.

§ 1492. Time and place of meeting of joint board; powers and duties. There shall be a joint board of state normal school trustees, to be composed of the governor, the superintendent of public instruction, the presidents of the different state normal schools, the chairman and two other members of each normal school board. The two members besides the chairman of each local board shall be selected by the respective local boards for every joint meeting. Said joint board shall meet on the second Friday of April in each year, alternately at the different state normal schools. The first meeting after the passage of this act shall be at San Diego, the second meeting at San Francisco, the third at San Jose, the fourth at Chico, and the fifth at Los Angeles. Thereafter the places of meeting shall be in the order mentioned above. Special meetings may be called at any time and at any place by the governor for the transaction of any urgent business affecting the welfare of any or all the state normal schools, when in his judgment it is necessary. The governor shall be ex-officio chairman of said joint board of normal school trustees.

The powers and duties of said joint board of normal schools trustees are as follows:

1. To prescribe and enforce a uniform series of text-books for use in the state normal schools; the state series of text-books shall be used, when published, in the grades and classes for which they are adapted.

2. To prescribe and enforce a uniform course of study, and time and standard for graduation from the state normal schools.

3. To prescribe a uniform standard of admission for students entering the normal schools, and for transfer of pupils from one normal school to another; provided, that a student for good cause may, upon recommendation of the president of the school from which he seeks to be transferred, enter any other normal school and without ex-

amination be admitted to classes corresponding to those in the school which he has left.

4. To sit as a board of arbitration in matters concerning the management of each state normal school that may need adjustment.

5. The joint board shall also have the power to pass any general regulations that may be applied to all the state normal schools, thus affecting their well-being.

6. Members in attending the meetings of the joint board shall receive mileage while in actual attendance upon the meeting, the same to be paid out of any appropriation made by the legislature for that purpose.

7. The superintendent of public instruction shall be the secretary of the joint board. The secretary shall keep a full record of all proceedings of the joint meetings of the trustees, and shall notify the secretary of each board of trustees of any changes made in the course of study, or the text-books to be adopted. En. March 12, 1872. Am'd. 1887, 138; 1897, 235; 1899, 78; 1903, 161.

Cal.Rep.Cit. 136, 215; 136, 218.

§ 1493. Apportionment of pupils. (Repealed.) En. March 12, 1872. Rep. 1873-4, 79.

§ 1494. General qualifications for admission as pupils. Every person admitted as a pupil to the normal school course must be:

First—Of good moral character.

Second—Of sixteen years of age.

Third—Of that class of persons who, if of a proper age, would be admitted in the public schools of this state, without restriction. En. March 12, 1872. Am'd. 1873-4, 76.

Cal.Rep.Cit. 136, 216.

§ 1495. Pupils from state at large. Teachers holding valid certificates to teach in any county in this state, may be admitted to any state normal school in the state. En. March 12, 1872. Am'd. 1897, 236.

§ 1496. Pupils from other states. Persons resident of another state may be admitted upon letters of recommendation from the governor or superintendent of schools thereof. En. March 12, 1872. Am'd. 1873-4, 77.

§ 1497. Pupils to file certain declaration. Every person making application for admission as a pupil to the normal

school must, at the time of making such application, file with the president of the school a declaration that he enters the school to fit himself for teaching, and that it is his intention to engage in teaching in the public schools of this state, or in the state or territory where the applicant resides. En. March 12, 1872. Am'd. 1873-4, 77; 1897, 236.

§ 1498. Competitive examinations before county boards. (Repealed.) En. March 12, 1872. Rep. 1873-4, 79.

§ 1499. Manner of examination. (Repealed.) En. March 12, 1872. Rep. 1873-4, 79.

§ 1500. Persons passing to be admitted as pupils, in what order. (Repealed.) En. March 12, 1872. Rep. 1873-4, 79.

§ 1501. Principal to make annual report. The president of each state normal school must make a detailed annual report to the board of trustees, with a catalogue of the pupils, and such other particulars as the board may require or he may think useful. En. March 12, 1872. Am'd. 1887, 138; 1897, 236.

§ 1502. Principal may be permitted to attend county institutes. The board of trustees of any normal school or its executive committee, may grant permission to the principal or any teacher of such school to attend any county institute, and give instruction on subjects relating to education in the public schools. En. March 12, 1872. Am'd. 1893, 302.

§ 1503. Issuance of certificates or diplomas of normal school. (1) The board of trustees of each state normal school, upon the recommendation of the faculty, may issue to those pupils who worthily complete the full course of study and training prescribed, diplomas of graduation, either from the normal department or the kindergarten department, or both.

(2) Such diploma from the normal department shall entitle the holder thereof to a certificate corresponding in grade to the grade of the diploma from any county, or city and county, board of education in the state. One from the kindergarten department shall entitle the holder

to a certificate to teach in any kindergarten class of any primary school in the state.

(3) Whenever any county, or city and county, board of education shall present to the state board of education a recommendation showing that the holder of a normal school diploma from the normal department of any state normal school of the state of California, or of a diploma from any other normal school, that the state board of education shall declare to be equivalent to a diploma from the normal department of a state normal school of this state, has had a successful experience of two years in the public schools of this state, subsequent to the granting of such diploma, the state board of education shall grant to the holder thereof a document signed by the president and secretary of the state board, showing such fact. The said diploma, accompanied by said document of the state board attached thereto, shall become a permanent certificate of qualification to teach in any primary or grammar school in the state, valid until such time as the said diploma may be revoked, as provided in section fourteen hundred and eighty-nine of this code, or until such time as the document issued by the state board, as aforesaid, may be revoked or suspended as provided in subdivision five of section fifteen hundred and twenty-one of this code.

(4) Upon presentation of the diploma and document referred to in subdivision three of this section to any county, or city and county, superintendent of schools, said superintendent shall record the name of the holder thereof in a book provided for that purpose in his office, and the holder thereof shall henceforth be absolved from the requirement of subdivision one of section sixteen hundred and ninety-six of this code.

(5) Said diploma of graduation from any state normal school in this state, when accompanied by a document granted by the faculty of the state university on or before the thirtieth day of June, nineteen hundred and three, showing that the holder of such diploma has successfully completed the course of instruction in said university prescribed for students who are graduates of a normal school of this state, shall entitle such holder to a high school certificate authorizing the holder to teach in any grammar and primary school, and in any high school in this state.

En. March 12, 1872. Am'd. 1873-4, 77; 1887, 138; 1893, 267; 1897, 236; 1901, 667.

Cal.Rep.Cit. 117, 521; 117, 522; 117, 523; 128, 448; 136, 216.

State board of examination abolished: Post, sec. 1757.

State board of education: Post, secs. 1517 et seq.

§ 1504. Secretary and board of trustees. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 78; 1887, 139. Rep. 1897, 237.

§ 1505. Supervision by superintendent of public instruction. The superintendent of public instruction must visit each school from time to time, inquire into its condition and management, enforce the rules and regulations made by the board, require such report as he deem proper from the teachers of the school, and exercise a general supervision over the same. En. March 12, 1872. Am'd. 1873-4, 78; 1897, 237.

Superintendent of public instruction: Post, secs. 1532, 1533.

§ 1506. Biennial appropriation to be made. (Repealed.) En. March 12, 1872. Rep. 1887, 139; 1897, 237.

§ 1507. Orders on controller, how drawn. Each order upon the controller of state by the board of trustees of a state normal school must be signed by the president of the board and countersigned by the secretary. Upon presentation of the order aforesaid, signed and countersigned as aforesaid, the controller of state must draw his warrant upon the state treasurer in favor of the board of trustees for any moneys or any part thereof, appropriated and set apart for the support of the normal school, and the treasurer must pay such warrants on presentation. En. March 12, 1872. Am'd. 1873-4, 78; 1887, 139.

CHAPTER III.

PUBLIC SCHOOLS.

Article I. State Board of Education, §§ 1517-1522.
II. Superintendent of Public Instruction, §§ 1532, 1533.
III. School Superintendents, §§ 1542-1553.
IV. Teachers' Institutes, §§ 1560-1565.
V. School Districts, §§ 1575-1583.
VI. Elections for School Trustees, §§ 1593-1602.
VII. Boards of Trustees of School Districts and City Boards of Education, §§ 1611-1625.
VIII. District Census Marshals, §§ 1634-1640.
IX. Clerks of School Districts, §§ 1649-1652.
X. Schools, §§ 1662-1674.
XI. Pupils, §§ 1682-1687.
XII. Teachers, §§ 1696-1704.
XIII. District Libraries, §§ 1712-1717.
XIV. Educational Journal, §§ 1726-1731. (Repealed.)
XV. State Board of Examination, §§ 1741-1758. (Repealed.)
XVI. County Boards of Education, §§ 1768-1778.
XVII. City Boards of Examination, §§ 1787-1794.
XVIII. County School Tax, §§ 1817-1820.
XIX. District School Tax, §§ 1830-1852.
XX. General Provisions Relative to School Funds and Taxes, §§ 1857-1861.
XXI. Miscellaneous Provisions Relating to Public Schools, §§ 1867-1891.

ARTICLE I.

STATE BOARD OF EDUCATION.

§ 1517. Board, how constituted.
§ 1518. President and secretary of.
§ 1519. Concurrence of a majority of all members necessary.
§ 1520. Meetings of.
§ 1521. General powers and duties of.
§ 1522. Traveling expenses of.

§ 1517. Board, how constituted. The state board of education consists of the governor, the superintendent of public instruction, and the principals of the state normal schools. En. March 12, 1872. Am'd. 1880, 28; 1889, 178.

Education: See Const. Cal., art. IX.

§ 1518. President and secretary of. The governor is the president, and the superintendent of public instruction the secretary of the board. En. March 12, 1872.

§ 1519. Concurrence of a majority of all members necessary. A concurrence of a majority of all the members is necessary to the validity of any act of the board. En. March 12, 1872.

Cal.Rep.Cit. 60, 124.

§ 1520. Meetings of. The board shall meet at the call of the secretary, and not less than twice in each year. En. March 12, 1872. Am'd. 1889, 178; 1893, 237.

§ 1521. General powers and duties of. The powers and duties of the state board of education are as follows:

1. To adopt rules and regulations not inconsistent with the laws of this state for its own government, and for the government of the public schools and district school libraries.

2. (a) To prescribe by general rule the credentials upon which persons may be granted certificates to teach in the high schools of this state. No credentials shall be prescribed or allowed, unless the same, in the judgment of said board, are the equivalent of a diploma of graduation from the University of California, and are satisfactory evidence that the holder thereof has taken an amount of pedagogy equivalent to the minimum amount of pedagogy prescribed by the state board of education of this state, and include a recommendation for a high-school certificate from the faculty of the institution in which the pedagogical work shall have been taken.

(b) The said board shall also consider the cases of individual applicants, who have taught successfully for a period of not less than twenty school months, and who are not possessed of the credentials prescribed by the board under the provisions of this section. The said board, in its discretion, may issue to such applicants special credentials upon which they may be granted certificates to teach in the high schools of the state. In such special cases, the board may take cognizance of any adequate evidence of preparation which the applicants may present. The standard of qualification in such special cases shall not be lower than that represented by the other credentials named by the board under the provisions of this section.

3. To grant life diplomas of four grades, valid throughout the state, as follows:

(a) High school: Authorizing the holder to teach in any primary and grammar or high school.

(b) Grammar school: Authorizing the holder to teach in any primary or grammar school.

(c) Kindergarten-primary: Authorizing the holder to teach in the kindergarten class of any primary school.

(d) Special: Authorizing the holder to teach in any school such special branches and in such grades as are named in such diploma.

4. Except as provided in sections fifteen hundred and three and seventeen hundred and seventy-five of this code, life diplomas may be issued only to such persons as have held for one year, and still hold, a valid county, or city and county, certificate, corresponding in grade to the grade of diploma applied for, and who shall furnish satisfactory evidence of having had a successful experience in teaching of at least forty-eight months. Not less than twenty-one months of said experience shall have been in the public schools of California. Every application must be accompanied to the state board of education by a certified copy of a resolution adopted by at least a three-fourths vote of all the members composing a county, or city and county, board of education, recommending that the diploma be granted, and also by an affidavit of the applicant, specifically setting forth the places in which, and the dates between which, said applicant has taught. The application must also be accompanied by a fee of two dollars, for the purpose of defraying the expense of issuing the diploma.

5. To revoke or suspend for immoral or unprofessional conduct, or for evident unfitness for teaching, life diplomas, educational diplomas, documents issued under the provisions of sections fifteen hundred and three and seventeen hundred and seventy-five of this code, or credentials issued in accordance with subdivision two of this section; and to adopt such rules for said revocation as they may deem expedient or necessary.

6. To have done by the state printer, or other officer having the management of the state printing, any printing required by it; provided, that all orders for printing shall first be approved by the state board of examiners.

7. To adopt and use, in authentication of its acts an official seal.

8. To keep a record of its proceedings.

9. To designate some educational monthly journal as the official organ of the department of public instruction. The publishers of such journal shall, before the tenth day of each month, mail one copy of such journal to the clerk of every school district in the state and to the sec-

retary of every board of education, and shall, on or before the tenth day of each month, file an affidavit with the superintendent of public instruction, showing that such copies have been so mailed for that month. Each clerk of a school district and each clerk of a board of education, receiving a copy of such journal so mailed to him, shall place such copy in the school library of his district, before the end of the month in which such copy shall be so received. The county superintendent of schools of each county, or city and county, shall draw his warrant semi-annually, in favor of the publishers of such school journal, for an amount equal to one half of the regular subscription price of such journal, not exceeding one dollar and fifty cents in any school year, for each and every school district in his county, or city and county, and charge the same to the library fund of the district; provided, that such warrant shall not be drawn until such county superintendent of schools shall have received from the superintendent of public instruction a certificate to the effect that the affidavits aforesaid have been duly filed in his office, showing the mailing of copies of such journal as above required, for the half year to be covered by such warrant. En. March 12, 1872. Am'd. 1873-4, 79; 1880, 29; 1889, 178; 1891, 150; 1893, 237; 1901, 668.

Cal.Rep.Cit. 55, 333.

Compare with post, sec. 1874.

Acts relating to state school books: See General Laws, title Schools.

§ 1522. Traveling expenses of. The actual traveling expenses of the members incurred in attending the meetings of the board must be audited by the controller, and paid out of the general fund of the state treasury. En. March 12, 1872.

ARTICLE II.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

§ 1532. General duties of superintendent.
§ 1533. Power to call convention of superintendents.

§ 1532. General duties of superintendent. It is the duty of the superintendent of public instruction,—

First—To superintend the schools of this state.

Second—To report to the governor, on or before the fifteenth day of September preceding each regular session of the legislature, a statement of the condition of the state normal schools and other educational institutions supported by the state, and of the public schools.

Third—To accompany his report with tabular statements, showing the number of school children in the state; the number attending public school, and the average attendance; the number attending private schools, and the number not attending schools; the amount of state school fund apportioned, and the sources from which derived; the amount raised by county and district taxes, or from other sources of revenue, for school purposes; and the amount expended for salaries of teachers, for building schoolhouses, for district school libraries, and for incidental expenses.

Fourth—To apportion the state school fund; and to furnish an abstract of such apportionment to the state controller, the state board of examiners, and to the county auditors, county treasurers, and county superintendents of the several counties of the state.

Fifth—To draw his order on the controller in favor of each county treasurer, for school moneys apportioned to the county.

Sixth—To prepare, have printed, and furnish all officers charged with the administration of the laws relating to the public schools, and to teachers, such blank forms and books as may be necessary to the discharge of their duties, including blank teachers' certificates to be used by county boards of education.

Seventh—To have the laws relating to the public schools printed in pamphlet form, and to supply school officers and school libraries with one copy each.

Eighth—To visit the several orphan asylums to which state appropriations are made, and examine into the course of instruction therein.

Ninth—To visit the schools in different counties, and inquire into their condition; and the actual traveling expenses thus incurred (provided, that they do not exceed fifteen hundred dollars per annum) shall be allowed, audited, and paid out of the general fund in the same manner as other claims are audited and paid.

Tenth—To authenticate with his official seal all drafts

or orders drawn by him, and all papers and writings issued from his office.

Eleventh—To have bound, at the state bindery, all valuable school reports, journals, and documents in his office, or hereafter received by him.

Twelfth—To report to the controller, on or before the tenth day of July of each year, the total number of children in the state between the ages of five and seventeen years, as shown by the latest reports of the county superintendents on file in his office.

Thirteenth—To deliver over, at the expiration of his term of office, on demand, to his successor, all property, books, documents, maps, records, reports, and other papers belonging to his office, or which may have been received by him for the use of his office. En. March 12, 1872. Am'd. 1873-4, 86; 1880, 29; 1887, 125; 1889, 180; 1891, 152; 1893, 239.

Cal.Rep.Cit. 97, 435.

Election of superintendent: See Const. Cal., art. IX, sec. 2.

§ 1533. Power to call convention of superintendents. He shall have power to call, biennially, a convention of the county and city superintendents, to assemble at such time and place as he shall deem most convenient, for the discussion of questions pertaining to the supervision and administration of the public schools, the laws relating thereto, and such other subjects affecting the welfare and interest of the public schools as shall properly be brought before it. It is hereby made the duty of all county and city superintendents to attend and take part in the proceedings of such convention when it is called. The actual expenses of the county superintendents attending the convention shall be allowed by the board of supervisors, and paid out of the same fund as the salary of the county superintendents is paid; the actual expenses of the city superintendents attending the convention shall be allowed and paid out of the same fund as the salary of such city superintendents is paid. En. Stats. 1873-4, 85. Am'd. 1887, 127; 1891, 153; 1893, 240.

ARTICLE III.

SCHOOL SUPERINTENDENTS.

§ 1542. Who is eligible. (Repealed.)
§ 1543. General duties of school superintendents.
§ 1544. Forfeiture for failure to report.
§ 1545. May appoint teachers and open schools, when.
§ 1546. May direct repairs, etc., when.
§ 1547. Warrants drawn by him. (Repealed.)
§ 1548. Warrants, for expenses and claims.
§ 1549. May appoint deputies.
§ 1550. Compensation of deputy in cities.
§ 1551. Report of school children. Supervision of district boundaries.
§ 1552. Allowance of expenses.
§ 1553. Superintendent, when not to teach.

§ 1542. Who is eligible. (Repealed.) En. March 12, 1872. Rep. 1873-4, 84; 1873-4, 113.

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§ 1543. General duties of school superintendents. It is the duty of the county superintendent of each county:

First—To superintend the schools of his county.

Second—1. To apportion the school moneys to each school district, as provided in section one thousand eight hundred and fifty-eight of this code, at least four times a year. For this purpose he may require of the county auditor a report of the amount of all school moneys on hand to the credit of the several school funds of the county not already apportioned; and it is hereby made the duty of the auditor to furnish such report when so required; and whenever an excess of money has accumulated to the credit of a school district by reason of a large census roll and a small attendance, beyond a reasonable amount necessary to maintain a school for eight months in such district for the year, the superintendent of schools shall place said excess of money to the credit of the unapportioned school funds of the county, and shall apportion the same as other school funds are apportioned.

2. If in any school district there has been an average daily attendance of only five, or a number of pupils less than five, during the whole school year, the superintendent shall at once suspend the district, and report the fact to the board of supervisors at their next meeting. The board of supervisors, upon receiving such report from the superintendent, shall declare the district lapsed, and shall attach the territory thereof to one or more of the ad-

joining school districts in such manner as may be by them deemed most convenient for the residents of said lapsed district.

3. When any district has been declared lapsed, the board of supervisors shall sell or otherwise dispose of the property thereto belonging, and shall place the proceeds of such sale to the credit of the district. Thereupon the superintendent shall determine all outstanding indebtedness of said lapsed district, and shall draw his requisition upon the county auditor in payment thereof. Any balance of moneys remaining to the credit of said lapsed district shall be transferred by the superintendent to the unapportioned school funds of the county, and shall be apportioned as other school funds are apportioned. Should there not be sufficient funds to the credit of the lapsed district to liquidate all of the outstanding indebtedness thereof, the superintendent shall draw his requisition upon the county auditor pro rata for the several claims.

Third—On the order of the board of school trustees, or board of education of any city or town having a board of education, to draw his requisition upon the county auditor for all necessary expenses against the school fund of any district. The requisitions must be drawn in the order in which the orders therefor are filed in his office. Each requisition must specify the purpose for which it is drawn; but no requisition shall be drawn unless the money is in the fund to pay it; and no requisition shall be drawn upon the order of the board of school trustees or board of education against the funds of any district except the teachers' salaries, unless such order is accompanied by an itemized bill showing the separate items, and the price of each, in payment for which the order is drawn; nor shall any requisition for teachers' salaries be drawn unless the order shall state the monthly salary of teacher, and name the months for which such salary is due. Upon the receipt of such requisition the auditor shall draw his warrant upon the county treasurer in favor of the parties for the amount stated in such requisition.

Fourth—To keep, open to the inspection of the public, a register of requisitions, showing the fund upon which the requisitions have been drawn, the number thereof, in whose favor, and for what purpose they were drawn, and

also a receipt from the person to whom the requisition was delivered.

Fifth—To visit and examine each school in his county at least once in each year. For every school not so visited the board of supervisors must, on proof thereof, deduct ten dollars from his salary.

Sixth—To preside over teachers' institutes held in his county, and to secure the attendance thereat of lecturers competent to instruct in the art of teaching, and to report to the county board of education the names of all teachers in the county who fail to attend regularly the sessions of the institute; to enforce the course of study, the use of text-books, and the rules and regulations for the examination of teachers prescribed by the proper authority.

Seventh—He shall have power to issue, if he doem it proper to do so, temporary certificates, valid until the next semi-annual meeting of the county board of education, to persons holding certificates of like grade granted in other counties, cities, or cities and counties, or upon any certificates or diplomas upon which county boards are empowered to grant certificates without examination, as specified in section seventeen hundred and seventy-five; provided, that no person shall be entitled to receive such temporary certificate more than once in the same county.

Eighth—To distribute all laws, reports, circulars, instructions, and blanks which he may receive for the use of school officers.

Ninth—To keep in his office the reports of the superintendent of public instruction.

Tenth—To keep a record of his official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants examined, which shall be open to the inspection of any applicant or his authorized agent.

Eleventh—Except in incorporated cities having boards of education, to pass upon and approve or reject all plans for schoolhouses. To enable him to do so, all boards of trustees, before adopting any plans for school buildings, must submit the same to the county superintendent for his approval.

Twelfth—To appoint trustees to fill all vacancies to hold until the first day of July succeeding such appointment; when new districts are organized, to appoint trustees for

the same, who shall hold office until the first day of July next succeeding their appointment. In case of the failure of the trustees to employ a janitor, as provided in section sixteen hundred and seventeen, subdivision seventh, of this code, he shall appoint a janitor, who shall be paid out of the school fund of the district. Should the board of school trustees of any district fail or refuse to issue an order for the compensation for such service, the superintendent is hereby authorized to issue, without such order, his requisition upon the county school fund apportioned to such district.

Thirteenth—To make reports, when directed by the superintendent of public instruction, showing such matters relating to the public schools in his county as may be required of him.

Fourteenth—To preserve carefully all reports of school officers and teachers, and, at the close of his official term, deliver to his successor all records, books, documents, and papers belonging to the office, taking a receipt for the same, which will be filed in the office of the county clerk.

Fifteenth—The county superintendent shall, unless otherwise provided by law, in the month of July of each year, grade each school, and a record thereof shall be made in a book to be kept by the county superintendent in his office for this purpose. And no teacher holding a certificate below the grade of said school shall be employed to teach the same. En. March 12, 1872. Am'd. 1873-4, 88; 1880, 31; 1881, 38; 1887, 127; 1889, 181; 1891, 153; 1893, 240; 1895, 60.

Cal.Rep.Cit. 97, 435; 97, 437; 99, 29; 100, 529; 104, 349; 104, 350; 117, 357. Subd. 1—134, 593. Subd. 2—134, 66; Subd. 3—91, 473; 117, 359.

§ 1544. Forfeiture for failure to report. If he fails to make a full and correct report, as required under the provisions of subdivision fourteen of section fifteen hundred and forty-three, at the time fixed by the superintendent of public instruction, he forfeits one hundred dollars of his salary; and the board of supervisors, upon receiving from the superintendent of public instruction notice of such failure, must deduct the amount forfeited from his salary. En. March 12, 1872. Am'd. 1873-4, 90; 1881, 40; 1889, 183.

§ 1545. May appoint teachers and open schools, when. He must, when there is sufficient money in the fund of

any school district to maintain a free school therein for six months, if the trustees fail to have such school kept, appoint a teacher, and open and keep such school, and may draw his requisition upon the county auditor, who shall draw his warrant upon the fund of such district for the expense incurred. En. March 12, 1872. **Am'd.** 1880, 33.

Conforms to Const. Cal., art. IX, sec. 5.

§ 1546. **May direct repairs, etc., when.** He may, in his discretion, require the trustees of any district to repair the school-buildings or property, or to abate any nuisance in or about the premises, if such repairs or abatement can be done for a sum not exceeding fifty dollars, and there is a sufficient amount of money in the treasury to the credit of the district. He may also in all cases require the trustees to provide suitable out-houses, and, where practicable, to adorn the grounds with fruit and ornamental trees and shrubbery; and if the trustees neglect to make such provision, he may cause it to be done, and pay for it on his requisition upon the county auditor, who shall draw his warrant payable out of any money to the credit of the district. En. March 12, 1872. **Am'd.** 1880, 33.

§ 1547. **Warrants drawn by him. (Repealed.)** En. March 12, 1872. **Rep.** 1873-4, 111.

§ 1548. **Warrants, for expenses and claims.** He may draw his requisition upon the county auditor, who shall draw his warrant on the unapportioned county school fund, in his own favor, for the binding of school documents, not to exceed twenty dollars a year; for postage and expressage for his office, not to exceed two dollars for each district of his county, and for such other incidental expenses as may be authorized by law; provided, that not more than one half of such allowance shall be used during the first six months of any school year, except by unanimous consent of the board of supervisors; and provided further, that in incorporated cities, each school containing three hundred pupils shall be considered equal to one school district. En. March 12, 1872. **Am'd.** 1873-4, 90; 1880, 33; 1891, 155.

§ 1549. **May appoint deputies.** Each county superintendent may appoint a deputy, but no salary payable out

of the school fund must be allowed such deputy. En. March 12, 1872. Am'd. 1873-4, 90.

Cal.Rep.Cit. 89, 222.

§ 1550. Compensation of deputy in cities. The deputy school superintendent of any city, or city and county, having over thirty thousand inhabitants, may receive such compensation as the board of education thereof prescribes, payable in the same manner and out of the same fund as the superintendent of schools thereof is paid. En. March 12, 1872. Am'd. 1880, 33; 1881, 40.

§ 1551. Report of school children. Supervision of district boundaries. Every school superintendent in this state must, on or before the first day of July in each year, report to the superintendent of public instruction, and to the board of supervisors of his county, the number of children therein between the ages of five and seventeen years, as appears by the latest returns of the census marshals on file in his office. It shall be the duty of every county superintendent to inquire and ascertain whether the boundaries of the school districts in his county are definitely and plainly described in the records of the boards of supervisors, and to keep in his office a full and correct transcript of such boundaries. In case the boundaries of districts are conflicting, or incorrectly described, he shall report such fact to the board of supervisors, and the board of supervisors shall immediately take such steps as are necessary to change, harmonize, and clearly define them. The county superintendent, if he deem it necessary for the guidance of school census marshals, may order the description of the district boundaries printed in pamphlet form, and pay for the same out of the county school fund. En. Stats. 1873-4, 85. [Another section under this same number. En. 1873-4, 91. Rep. 1880, 47.] Am'd. 1880, 33; 1891, 156; 1893, 243.

§ 1552. Allowance of expenses. Each county superintendent shall receive his actual and necessary traveling expenses, said expenses to be allowed by the board of supervisors, and to be paid out of the county general fund; provided, that this amount shall not exceed ten dollars per district per annum. En. Stats. 1873-4, 85; 1873-4, 91. Am'd. 1875-6, 26; 1889, 184; 1891, 156.

Cal.Rep.Cit. 59, 327; 59, 549; 59, 550; 87, 395.

§ 1553. **Superintendent, when not to teach.** No school superintendent who receives an annual salary of fifteen hundred dollars or more must follow the profession of teaching, or any other vocation that can conflict with his duties as superintendent; but those receiving less than fifteen hundred dollars per annum may teach in the public schools of this state. En. Stats. 1875-6, 26. Am'd. 1893, 243.

ARTICLE IV.

TEACHERS' INSTITUTES.

§ 1560. To be held annually in certain counties.
§ 1561. When held in other counties.
§ 1562. Length of sessions.
§ 1563. Pay of teachers in attendance.
§ 1564. Expenses of institute, how paid.
§ 1565. Teachers' institute fund.

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§ 1560. **To be held annually in certain counties.** The superintendent of every county in which there are twenty or more school districts, and of every city and county in the state, must hold at least one teachers' institute in each year; and every teacher employed in a public school in the county must attend such institute, and participate in its proceedings; provided, that cities employing seventy or more teachers may have a separate institute, to meet at least once a year, the sessions to be of not less than three nor more than five days; and provided further, that teachers attending such city institute shall not be required to attend the county institute. The expenses of such city institutes, not exceeding two hundred dollars annually, shall be paid from the special school funds of said city. En. March 12, 1872. Am'd. 1873-4, 92; 1891, 156; 1893, 244.

§ 1561. **When held in other counties.** In any county in which there are less than twenty school districts, the county superintendent may, in his discretion, hold an institute; when directed by the county board of education, he shall hold an institute not oftener than once each year, at such time and place as the board may direct. En. March 12, 1872. Am'd. 1873-4, 92; 1893, 244.

§ 1562. **Length of sessions.** Each session of the institute must continue not less than three nor more than five days. En. March 12, 1872.

§ 1563. Pay of teachers in attendance. When the institute is held during the time that teachers are employed in teaching, their pay must not be diminished by reason of their attendance. En. March 12, 1872.

§ 1564. Expenses of institute, how paid. The county superintendent must keep an accurate account of the actual expenses of said institute, with vouchers for the same, and draw his requisition upon the county auditor, who shall draw his warrant on the unapportioned county school fund to pay said amount; provided, that such amount must not exceed two hundred dollars for any one year. En. March 12, 1872. Am'd. 1873-4, 92; 1880, 34; 1893, 244. 1905 145

§ 1565. Teachers' institute fund. Except for a temporary certificate, and except as provided in subdivision second of section one thousand five hundred and three of the Political Code, every applicant for a teacher's certificate, or for the renewal of a certificate, upon presenting his application, shall pay to the county superintendent a fee of two dollars, to be by him immediately deposited with the county treasurer, to the credit of a fund to be known as the teachers' institute and library fund. All funds so credited shall be drawn out only upon the requisition of the county superintendent of schools upon the county auditor, who shall draw his warrant in payment of the services of instructors in the county teachers' institute; provided, they be not teachers in the public schools of the county in which such institute is held; and for the purchase of books for a library for the use of the teachers of the county. At least fifty per cent of the teachers' institute and library fund shall be expended for books. The county superintendent shall take charge of the teachers' library, prepare a catalogue of its contents, and keep a correct record of books taken therefrom and returned thereto. En. Stats. 1880, 34. Am'd. 1889, 184; 1891, 156; 1893, 244.

ARTICLE V.

SCHOOL DISTRICTS.

§ 1575. Names of districts.
§ 1576. What forms districts.
§ 1577. Formation of new and changing boundaries of old.
§ 1578. Duties of superintendent on receipt of petition.
§ 1579. Duties of supervisors on same.
§ 1580. New district, when not to share in school moneys. (Repealed.)
§ 1581. Action creating new districts void in certain events.
§ 1582. New district, when to share in school moneys. (Repealed.)
§ 1583. Management of joint districts.

§ 1575. Names of districts. Every school district must be designated by the name and style of "——— district (using the name of the district), of ——— county" (using the name of the county in which such district is situated); and in that name the trustees may sue and be sued, and hold and convey property for the use and benefit of such district. A number must not be used as a part of the designation of any school district. En. March 12, 1872.

Cal.Rep.Cit. 53, 30; 56, 480; 59, 131; 93, 419; 99, 152; 137, 662.

§ 1576. What forms districts. Every city or incorporated town, unless subdivided by the legislative authority thereof, shall constitute a separate school district, which shall be governed by the board of education or board of school trustees of such city or incorporated town; provided, that whenever a city or town shall be incorporated the board of supervisors of the county may annex thereto, for school purposes only, the remainder, or any part of the remainder, of the district or districts from which such city or incorporated town was organized, whenever a majority of the heads of families residing therein, as shown by the last preceding school census, shall petition for such annexation; and provided further, that the board of supervisors may include more territory than the remainder of the district or districts from which the city or incorporated town was organized, whenever a petition for such purpose is presented to them, signed by a majority of the heads of families, as shown by the last preceding school census, residing in such additional territory. When said remainder or part thereof, or said additional outside territory, has been annexed to said city or incorporated town, it shall be deemed a part of said city or incorporated town for the purpose of holding the general municipal election, and shall form one or more election precincts, as may be

determined by the legislative authority of said city or incorporated town, the qualified electors of which shall vote only for the board of education, or the board of school trustees; and such outside territory shall be deemed to be a part of said city or incorporated town for all matters connected with the school department thereof, for the annual levying and collecting of the property tax for the school funds of said city or incorporated town; and for all purposes specified in sections one thousand eight hundred and eighty to one thousand eight hundred and eighty-eight of this code, inclusive. En. March 12, 1872. Am'd. 1877-8, 28; 1891, 157; 1893, 245.

Cal.Rep.Cit. 55, 494; 97, 432; 99, 27; 99, 28; 99, 151; 107, 191; 108, 280; 125, 596; 127, 125; 129, 605.

§ 1577. Formation of new and changing boundaries of old. First—No new school district shall be formed at any other time than between the first day of December and the fifth day of April, nor at that time unless the parents or guardians of at least fifteen census children, residents of such proposed new district, and residing at a greater distance than two miles by a traveled road from the public schoolhouse in the district in which said parents or guardians reside, present a petition to the superintendent of schools, setting forth the boundaries of the new district asked for; provided, that the provision requiring that the petitioners shall reside a distance of more than two miles by a traveled road from the said public schoolhouse may be dispensed with when the petition shall be signed by the parents or guardians of fifty or more census children residents of a district containing more than three hundred census children. 1905 404

Second—The boundaries of a school district, except as provided in section one thousand five hundred and fifty-one of the Political Code, shall be changed only between the first day of January and the fifth day of April in any year, and then only when at least ten heads of families residing in the districts affected by the proposed change of boundaries shall present to the superintendent of schools a petition setting forth the changes of boundaries desired, and the reasons for the same; provided, that two or more districts lying contiguous may at any time be united to constitute but one district, whenever a petition signed by a majority of the heads of families residing in each of said

districts shall be presented to the superintendent of schools.

Third—Joint districts (that is, districts lying partly in one county and partly in another) may be formed at any time between the first day of December and the fifth day of April in any year, whenever a petition signed by the parents or guardians of at least fifteen census children, residents of such proposed joint district and residing at a greater distance than two miles by a traveled road from any public schoolhouse, shall be presented to the superintendent of each county affected by the proposed formation of the joint district; and provided further, that the provision requiring that the petitioners shall reside a distance of more than two miles by a traveled road from any public schoolhouse may be dispensed with when the petition shall be signed by the parents or guardians of fifty or more census children residents of districts any one of which contains more than three hundred census children. All the provisions relative to the formation of joint districts shall be by concurrent action of the superintendent and the board of supervisors of each county affected; still further provided, that by concurrent action of the boards of supervisors and the county school superintendents, contiguous school districts or parts of such school districts lying in different counties may, on proper petitions as above required, be united to form a joint school district, and the school property within the territory thus united shall become the property of the newly formed joint school district.

Fourth—The children residing in any newly formed district, in any district whose boundaries have been changed, or in any joint district, shall be permitted to attend the school in the district or districts from which the newly formed district was constituted until the first day of July next succeeding the formation or change.

Fifth—Whenever a district shall be united with a municipality, or with another district, all funds belonging to said district shall be transferred, by requisition of the superintendent of the county upon the county auditor, to the municipality or district with which said district is united. En. March 12, 1872. Am'd. 1873-4, 92; 1875-6, 27; 1880, 34; 1881, 40; 1885, 16; 1889, 184; 1893, 245; 1903, 358.

Cal.Rep.Cit. 101, 659; 108, 280; 108, 281; 127, 126; 138, 255.

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§ 1578. Duties of superintendent on receipt of petition. After giving due notice to all parties interested, by sending notice by registered mail to each of the trustees of any school district that may be affected by the proposed change, or by causing notices to be posted in three public places in each district affected, one of which shall be at the door of the schoolhouse of said district, for at least one week, the county superintendent must transmit the petition to the board of supervisors, with his approval or disapproval. If he approves the petition he may note such changes in the boundaries as he may think desirable. En. March 12, 1872. Am'd. 1873-4, 93; 1889, 185.

Cal.Rep.Cit. 108, 280; 108, 281.

§ 1579. Duties of supervisors on same. The board of supervisors must, at their first meeting after the receipt of the petition, act upon the same. If the board establishes the district, they may do so in accordance with the original prayer of the petition, or with such modifications as they choose to make. En. March 12, 1872. Am'd. 1873-4, 93.

Cal.Rep.Cit. 108, 280; 108, 281.

§ 1580. New district, when not to share in school moneys. (Repealed.) En. March 12, 1872. Rep. 1889, 185.

§ 1581. Action creating new districts void in certain events. After the making of an order by the board of supervisors creating a new district, the school must be opened therein not later than the second Monday of September in the year in which the order was made; otherwise said order shall be null and void. En. March 12, 1872. Am'd. 1891, 157; 1893, 246.

Cal.Rep.Cit. 99, 29; 138, 256.

§ 1582. New district, when to share in school moneys. (Repealed.) En. March 12, 1872. Rep. 1891, 185.

§ 1583. Management of joint districts. Whenever a district lies partly in one county and partly in another, the county superintendent must apportion to such district such proportion of the school money to which such district is entitled as the number of school census children residing in that portion of the district situated in his county bears to the whole number of school census children in the whole district. The text-books to be used and the rules governing the school in such district shall be those adopted

by the board of education of the county in which the schoolhouse in said joint district is located. The trustees and teachers of joint districts shall make to the superintendents of each county in which the district is located the reports which other trustees and teachers are required to make, and also the number of pupils attending the school from each county. The teacher in such joint district shall not be required to hold a certificate in both counties. En. Stats. 1880, 34. Am'd. 1891, 157; 1893, 246.

ARTICLE VI.

ELECTIONS FOR SCHOOL TRUSTEES.

§ 1593. Elections for trustees, when and where held.
§ 1594. Elections in new districts. (Repealed.)
§ 1595. Notices of election.
§ 1596. Forming precincts and appointing inspectors and judges.
§ 1597. Opening and closing polls.
§ 1598. Who may vote.
§ 1599. Voting must be by ballot.
§ 1600. Challenges.
§ 1601. Poll lists.
§ 1602. Certificates of election.

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§ 1593. Election for trustees, when and where held. An election for school trustees must be held in each school district on the first Friday of June of each year, at the district schoolhouse, if there is one, and if there is none, at the place to be designated by the board of trustees.

1. The number of school trustees for any school district, except where city boards are otherwise authorized by law, shall be three. No person shall be deemed ineligible to the office of trustee on account of sex.

2. In new school districts, the school trustees shall be elected on the first Friday of June subsequent to the formation of the district, to hold office for one, two and three years respectively, from the first day of July next succeeding their election.

3. When a vacancy occurs from any of the causes specified in section nine hundred and ninety-six of this code, the superintendent shall appoint a suitable person to fill such vacancy, until the first day of July next succeeding the appointment, and a party shall be elected at the next June election, to hold office for the remainder of the term.

4. Except as provided in subdivisions two and three of this section, one trustee shall be elected annually, to hold

office for three years, or until his successor shall be elected and qualified. En. March 12, 1872. Am'd. 1873-4, 80; 1880, 35; 1881, 40; 1887, 142; 1889, 185; 1893, 247.

Cal.Rep.Cit. 88, 373; 129, 606.

§ 1594. Elections in new districts. (Repealed.) En. March 12, 1872. Rep. 1889, 185.

§ 1595. Notices of election. Not less than ten days before the election required under section fifteen hundred and ninety-three, the trustees must post notices in three public places in the district, which notices must specify the time and place of election, and the hours during which the polls will be kept open; if within five days of the election the trustees have failed to post the notices required under this section, then any three electors of the district may give notice of such election. En. March 12, 1872. Am'd. 1873-4, 93.

§ 1596. Forming precincts and appointing inspectors and judges. Trustees or board of education charged with the calling, conduct and carrying on of elections, may subdivide the district into election precincts for the holding of the election, and may change and alter such precincts as often as occasion may require, and must appoint one inspector and two judges of election in each precinct; if none are so appointed, or, if those appointed are not present at the time for opening the polls, the electors present may appoint them, and they shall conduct the election. En. March 12, 1872. Am'd. 1891, 157; 1893, 247; 1903, 354.

Cal.Rep.Cit. 101, 660.

§ 1597. Opening and closing polls. In districts in which the number of children between five and seventeen years of age exceed five hundred, the polls must be opened at eight o'clock A. M., and kept open until sundown. In other districts the polls must not be opened before nine o'clock A. M., nor kept open less than four hours. En. March 12, 1872. Am'd. 1880, 35.

Cal.Rep.Cit. 124, 12; 124, 703.

§ 1598. Who may vote. Every qualified elector in the county, who has resided in the district for thirty days next preceding the election, may vote thereat. En. March 12, 1872. Am'd. 1880, 35.

Cal.Rep.Cit. 129, 606; 119, 617; 119, 618.

§ 1599. **Voting must be by ballot.** The voting must be by ballot (without reference to the general election law in regard to nominations, form of ballot, or manner of voting), which shall be handed by the elector voting to the inspector, who shall then, in his presence, deposit the same in the ballot box, and the judges shall enter the elector's name on the poll list. En. March 12, 1872. Am'd. 1873-4, 94; 1891, 157; 1893, 247.

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§ 1600. **Challenges.** Any person offering to vote may be challenged by any elector of the district, and the judges of election must thereupon administer to the person challenged an oath, in substance as follows: "You do swear that you are a citizen of the United States, that you are twenty-one years of age, that you have resided in this state one year, in this county ninety days, and in this school district thirty days next preceding this election, and that your name is on the great register of this county, and that you have not before voted this day." If he takes the oath prescribed in this section, his vote must be received, otherwise his vote must be rejected. En. March 12, 1872. Am'd. 1873-4, 94; 1880, 35.

Cal.Rep.Cit. 119, 618.

§ 1601. **Poll lists.** A poll and tally list must be kept and returned to the board of trustees. En. March 12, 1872.

§ 1602. **Certificates of election.** The officers of election must publicly canvass the votes immediately after closing the polls, and make, sign, and deliver certificates of election to the person or persons elected, which must, with the oath of office of the person so elected attached, be forwarded to the county superintendent of schools, and filed in his office. En. March 12, 1872. Am'd. 1873-4, 94; 1893, 248.

ARTICLE VII.

BOARDS OF TRUSTEES OF SCHOOL DISTRICTS, AND CITY BOARDS OF EDUCATION.

§ 1611. School district government.
§ 1612. Terms of office, new districts, etc. (Repealed.)
§ 1613. Term of office.
§ 1614. Vacancies, how filled.
§ 1615. Trustees of new districts and joint districts.
§ 1616. Boards of education provided for by special statutes.
§ 1617. General powers of boards of trustees and of education.

§ 1618. Separate classes for deaf pupils.
§ 1619. Must maintain all schools for equal length of time.
§ 1620. Stationery, etc., to be furnished to pupils.
§ 1621. School moneys, how used.
§ 1622. Same.
§ 1623. Liabilities of trustees on contracts.
§ 1624. Liability of board for dereliction as to school moneys.
§ 1625. Persons to be admitted. (Repealed.)

§ 1611. School district government. Except when otherwise authorized by law, every school district shall be under the control of a board of school trustees, consisting of three members. En. Stats. 1873-4, 95. Am'd. 1880, 36.

§ 1612. Terms of office, new districts, etc. (Repealed.) En. Stats. 1873-4, 95. Am'd. 1887, 143. Rep. 1889, 185.

§ 1613. Term of office. The term of office of school trustees is three years, from the first day of July next succeeding their election. En. March 12, 1872. Am'd. 1887, 143.

§ 1614. Vacancies, how filled. First. Vacancies in the office of school trustee are caused by the happening of any of the events specified in section nine hundred and ninety-six of the Political Code, or by failure to elect, as provided in section one thousand five hundred and ninety-three of this code.

Second. When a school trustee resigns, his resignation must be sent in writing to the county superintendent of schools. En. March 12, 1872. Am'd. 1889, 185; 1893, 248.

§ 1615. Trustees of new districts and joint districts. First. When a new district is organized, such of the trustees of the old district as reside within the boundaries of the new shall be trustees of the new district until the expiration of the time for which they were elected. 1905 53

Second. When joint districts are formed, three trustees shall be elected at the June election next succeeding the formation thereof, to hold office for one, two, and three years, respectively, from the first day of July next succeeding their election. The terms of the trustees in the districts uniting to form the joint district shall expire on the formation of said joint district, and the superintendent of the county in which lies the district having the greater number of census children shall appoint two trustees, and the superintendent of the county in which the other dis-

trict lies shall appoint one trustee, to hold office until the first day of July next succeeding the formation of the joint district. En. March 12, 1872. Am'd. 1893, 248.

§ 1616. Boards of education provided for by special statutes. Boards of education are elected in cities under the provisions of the laws governing such cities, and their powers and duties are as prescribed in such laws, except as otherwise in this chapter provided. En. March 12, 1872. Am'd. 1880, 36.

Cal.Rep.Cit. 82, 488; 97, 433; 97, 434; 107, 188; 129, 606.

§ 1617. General powers of boards of trustees and of education. The powers and duties of trustees of school districts, and of boards of education in cities, are as follows:

First. To prescribe and enforce rules, not inconsistent with law or those prescribed by the state board of education, for their own government and government of schools, and to transact their business at regular or special meetings, called for such purpose, notice of which shall be given each member.

Second. To manage and control the school property within their districts, and to pay all moneys collected by them, from any source whatever, for school purposes, into the county treasury, to be placed to the credit of the special fund of their districts.

Third. To purchase text-books of the state series for the use of pupils whose parents are unable to purchase them, school furniture, including organs and pianos, and apparatus, and such other things as may be necessary for the use of schools; provided, that except in incorporated cities having boards of education, they purchase such books and apparatus only as have been adopted by the county board of education.

Fourth. To rent, furnish, repair, and insure the school property of their respective districts.

Fifth. When directed by a vote of their district, to build schoolhouses or to purchase or sell school lots.

Sixth. To make, in the name of the district, conveyances on all property belonging to the district, and sold by them.

Seventh. To employ the teachers, and, excepting in incorporated cities having boards of education, immediately

notify the superintendent of schools, in writing, of such employment, naming the grade of certificate held by the teachers employed; also, to employ janitors and other employees of the schools; to fix and order paid their compensation, unless the same be otherwise prescribed by law; provided, that no board of trustees shall enter into any contract with such employees to extend beyond the thirtieth day of June next ensuing.

Eighth. To suspend and expel pupils for misconduct.

Ninth. To exclude from schools children under six years of age; provided that in cities and towns in which the kindergarten has been adopted, or may hereafter be adopted, as a part of the public primary schools, children may be admitted to such kindergarten classes at the age of four years.

Tenth. To enforce in schools the course of study and the use of text-books prescribed and adopted by the proper authority.

Eleventh. To appoint district librarians, and enforce the rules prescribed for the government of district libraries.

Twelfth. To exclude from school and school libraries all books, publications, or papers of a sectarian, partisan, or denominational character.

Thirteenth. To furnish books for the children of parents unable to purchase them; the books so furnished to belong to the school district, and to be kept in the district school library when not in use.

Fourteenth. To keep a register, open to the inspection of the public, of all children applying for admission and entitled to be admitted into the public schools, and to notify the parents or guardians of such children when vacancies occur, and receive such children into the schools in the order in which they are registered.

Fifteenth. To permit children from other districts to attend the schools of their district only upon the consent of the trustees of the district in which such children reside; provided, that should the trustees of the district in which children whose parents or guardians desire them to attend in other districts reside refuse to grant their consent, the parents or guardians of such children may appeal to the county superintendent and his decision shall be final.

Sixteenth. On or before the first day of April in each year, to appoint a school census marshal, and notify the

superintendent of schools thereof; provided, that in any city, or city and county, the appointment of all school census marshals shall be subject to the approval of the city superintendent of schools.

Seventeenth. To make an annual report, on or before the first day of July, to the superintendent of schools, in the manner and form and on the blanks prescribed by the superintendent of public instruction.

Eighteenth. To make a report, whenever required, directly to the superintendent of public instruction, of the text-books used in their schools.

Nineteenth. To visit every school in their district at least once in each term, and examine carefully into its management, condition and wants. This clause to apply to each and every member of the board of trustees.

Twentieth. Boards of trustees may, and upon a petition signed by a majority of the heads of families resident in the district as shown by the last preceding school census must, call meetings of the qualified electors of the district for determining or changing the location of the schoolhouse, or for consultation in regard to any litigation in which the district may be engaged, or be likely to become engaged, or in regard to any affairs of the district. Such meetings shall be called by posting three notices in public places, one of which shall be in a conspicious place on the schoolhouse, for not less than ten days previous to the time for which the meeting shall be called, which notices shall specify the purposes for which said meeting shall be called; and no other business shall be transacted at such meetings. District meetings shall be organized by choosing a chairman from the electors present, and the district clerk shall be clerk of the meeting, and shall enter the minutes thereof on the records of the district. A meeting so called shall be competent to instruct the board of trustees:

1. In regard to the location or change of location of the schoolhouse, or the use of the same for other than school purposes; provided, that in no case shall the schoolhouse be used for purposes which necessitate the removal of any school desks or other school furniture,

2. In regard to the sale and purchase of school sites.

3. In regard to prosecuting, settling, or compromising any litigation in which the district may be engaged, or be

likely to become engaged, and may vote money, not exceeding one hundred dollars in any one year, for any of these purposes, in addition to any amount which may be raised by the sale of district school property, and the insurance of property destroyed by fire; provided, that the proceeds of the insurance of the library and apparatus shall be paid into the library fund. All funds raised by the sale of school property may be disposed of by direction of a district meeting. District meetings may be adjourned from time to time, as found necessary, and all votes instructing the board of trustees shall be taken by ballot, or by ayes and noes vote, as the meeting may determine. The board of trustees shall, in all cases be bound by the instructions of the district meeting in regard to the subjects mentioned in this section; provided, that the vote in favor of changing the location of the schoolhouse shall be two thirds of all the electors voting at said meeting upon the proposition to change the location. En. March 12, 1872. Am'd. 1873-4, 81; 1877-8, 28; 1880, 36; 1881, 41; 1889, 185; 1891, 158; 1893, 248.

Cal.Rep.Cit. 48, 57; 55, 494; 82, 488; 82, 494; 82, 496; 82, 594; 93, 418; 97, 434; 97, 435; 97, 436; 99, 29; 102, 185; 104, 354. Subd. 7—55, 492; 55, 493; 55, 495; 82, 495. Subd. 9—107, 191. Subd. 14—127, 125; 129, 606. Subd. 17—82, 591. Subd. 20—87, 172.

Act prohibiting soliciting of supervisor: See post, Appendix, title Officers.

Act to prevent discrimination against female teachers: See General Laws, title Schools.

§ 1618. Separate classes for deaf pupils. The board of education of every city or city and county, or board of school trustees of every school district in this state, containing five or more deaf children, or children who from deafness are unable to hear common conversation, between the ages of three and twenty-one years, may in their discretion establish and maintain separate classes in the primary and grammar grades of the public schools, wherein such pupils shall be taught by the pure oral system for teaching the deaf. En. March 12, 1872. Rep. 1873-4, 111. En. Stats. 1880, 17. Rep. 1889, 188. En. 1903, 96

Cal.Rep.Cit. 55, 492; 55, 496; 114, 151.

§ 1619. Must maintain all schools for equal length of time. First. The boards of school trustees and city boards of education must maintain all the schools established by

them for an equal length of time during the year, and, as far as practicable, with equal rights and privileges.

Second. When, in any district, it is necessary for the convenience of the residents of said district that the school therein should be maintained a part of the year in one portion of the district, and a part of the year in another portion of the district, the aggregate of the time the school has been maintained in the different portions of the district shall be considered in estimating the time for which a school has been maintained in the district during the school year. En. March 12, 1872. Am'd. 1880, 38; 1893, 251.

§ 1620. **Stationery, etc., to be furnished to pupils.** Writing and drawing paper, pens, inks, blackboards, blackboard rubbers, crayons, and lead and slate pencils, and other necessary supplies for the use of the schools, must be furnished under the direction of the city boards of education and boards of school trustees, and charges therefor must be audited and paid as other claims against the county school fund of their districts are audited and paid. En. March 12, 1872. Am'd. 1873-4, 95; 1880, 38; 1881, 43; 1889, 188; 1893, 251.

§ 1621. **School moneys, how used.** The boards of school trustees and city boards of education must use the school moneys received from the state and county apportionments exclusively for the support of schools for that school year, until at least an eight months' school has been maintained; if at the end of any year during which an eight months' school has been maintained there is an unexpended balance, it may be used for the payment of claims against the district outstanding, or it may be used for the year succeeding. Any balance remaining on hand at the end of any school year in which school has not been maintained eight months shall be reapportioned by the superintendent of schools as other moneys are apportioned; provided, that if a district has been prevented from maintaining a school for eight months in any year in consequence of fire, flood, prevailing epidemic, or other cause, which may, upon investigation by the superintendent of the county, be determined to be a good and sufficient one, said balance shall not be reapportioned. En. March 12, 1872. Am'd. 1873-4, 95; 1880, 38; 1881, 43; 1893, 251.

Cal.Rep.Cit. 97, 485; 134, 592.

§ 1622. Same. Boards of trustees may use the county school moneys for any of the purposes authorized by this chapter, but all state school moneys must, except the ten per cent reserved for district school library purposes, be applied exclusively for the payment of teachers of primary and grammar schools. En. March 12, 1872. Am'd. 1880, 38.

Cal.Rep.Cit. 134, 66.

Conforms to Const. Cal., art. IX, sec. 6.

§ 1623. Liabilities of trustees on contracts. Boards of trustees are liable as such, in the name of the district, for any judgment against the district for salary due any teacher on contract, and for all debts contracted under the provisions of this chapter, and they must pay such judgment or liabilities out of the school moneys to the credit of such district; provided, that the contracts mentioned in this section are not in excess of the school moneys accruing to the district for the school year for which the contracts are made, otherwise the district shall not be held liable. En. March 12, 1872. Am'd. 1873-4, 96.

Cal.Rep.Cit. 134, 66.

§ 1624. Liability of board for dereliction as to school moneys. If any board of trustees, or city board of education, fail to appoint a census marshal at the proper time, and through such failure the district is omitted in the apportionment of school moneys, the trustees or members of the city board of education are jointly and severally personally liable to the district for the full amount which the district would have received but for such failure; and the amount may be recovered in an action brought by any citizen of such district or city, in the name of and for the benefit of the district or city. En. March 12, 1872. Am'd. 1880, 38.

See post, secs. 1634-1640.

§ 1625. Persons to be admitted. (Repealed.) En. Stats. 1887, 125. Rep. 1891, 164.

ARTICLE VIII.

DISTRICT CENSUS MARSHALS.

§ 1634. Duty of census marshal.
§ 1635. Where district in two counties.
§ 1636. Report of.
§ 1637. Children absent at school, orphans, etc., to be listed.
§ 1638. Children of non-residents, when not to be included.
§ 1639. Compensation of marshal.
§ 1640. Failure to report, a misdemeanor.

§ 1634. Duty of census marshal. It is the duty of the census marshal:

First. To take annually, between the fifteenth and thirtieth days of April, inclusive, a census of all children, including the children of Indian parents who pay taxes, or who are not living in the tribal relation, under seventeen years of age, who were residents of his district on said fifteenth day of April.

Second. To report the results of his labors to the superintendent of schools (or to the board of education in cities), on or before the tenth day of May in each year.

Third. He shall visit each habitation, home, residence, domicile, or place of abode in his district, and by actual observation and interrogation enumerate the census children of the same.

Fourth. Before entering upon the discharge of his duties as such, the census marshal must qualify and file his oath of office in the office of the superintendent of schools. En. March 12, 1872. Am'd. 1873-4, 96; 1881, 43; 1893, 251.

Cal.Rep.Cit. 134, 66.

§ 1635. Where district in two counties. Whenever a district is formed, lying partly in two adjoining counties, the census marshal must report to each county superintendent the number of children in each county. En. March 12, 1872. Am'd. 1873-4, 96.

§ 1636. Report of. His report must be made under oath, upon blanks furnished by the superintendent of public instruction, and must show:

First. The number, age, sex, color, name and nationality of the children listed, and the number of those who from deafness are unable to hear common conversation.

Second. The names of the parents or guardians of said children, arranged alphabetically, except in cities of the first class. In all cities the number and street of residence must be given.

Third. The number of school children in each house, or family, that have not been vaccinated.

Fourth. Such other facts as the superintendent of public instruction may designate.

Fifth. The census marshal shall have power to administer oaths to parents and guardians.

Sixth. If at any time the superintendent of schools has reason to believe that a correct census of the district has not been taken, he must have it corrected, and if necessary for the purpose he may appoint a census marshal, and have the census of the district retaken. Should the board of education or the board of school trustees of said city or district fail or refuse to issue an order for the compensation of said marshal for his services, the superintendent of schools is hereby authorized to issue his requisition therefor against the county fund of such city or district without such order. En. March 12, 1872. Am'd. 1873-4, 96; 1881, 43; 1889, 188; 1893, 252; 1903, 95.

§ 1637. Children absent at school, orphans, etc., to be listed. He must include in his report all children who are absent attending institutions of learning, and whose parents or guardians are residents of the district; he must also include as census children the children of Indian parents who are not living in tribal relations. Orphan children, half-orphan children, and children living in orphanages and attending public school shall be listed in the district in which the orphanage is located under the guardianship of the matron of the orphanage; he must also include all native-born Chinese children. En. March 12, 1872. Am'd. 1893, 252; 1901, 51.

Cal.Rep.Cit. 134, 66.

§ 1638. Children of non-residents, when not to be included. He must not include in his report children who are attending institutions of learning or such benevolent institutions as deaf and dumb, blind, and orphan asylums in his district, whose parents or guardians do not reside therein, unless such children attend the public school in the school district in which such benevolent institution or orphanage is located. En. March 12, 1872. Am'd. 1873-4, 97; 1893, 252; 1901, 52.

§ 1639. Compensation of marshal. The compensation of census marshal must be audited and paid as other claims upon the school fund of the district are audited and paid; provided, such compensation shall not exceed six dollars per day for time actually and necessarily employed; and provided further that in no case shall the compensation be computed at a per capita sum; nor shall any order for

such compensation be drawn by the trustees of any district, or by any board of education, until they shall have been notified by the superintendent that the report of the census marshal has been approved by him. In case the report should not be approved by the superintendent, the census marshal shall not be entitled to receive any compensation. En. March 12, 1872. Am'd. 1889, 188; 1893, 253.

§ 1640. Failure to report, a misdemeanor. If the census marshal neglect or refuses to make his report at the time and in the manner herein required, or to perform any other duty devolved upon him, he must be deemed guilty of a misdemeanor, and on conviction be punished by fine or imprisonment. En. Stats. 1873-4, 85.

ARTICLE IX.

CLERKS OF SCHOOL DISTRICTS.

§ 1649. When and how elected.
§ 1650. General duties of.
§ 1651. When to provide supplies, etc.
§ 1652. When to act as other officers. (Repealed.)

§ 1649. When and how elected. Boards of trustees must annually, on the first Saturday of July, meet and elect one of their number clerk of the district; and if a clerk is not elected at this date, the superintendent shall appoint. En. March 12, 1872. Am'd. 1891, 160.

§ 1650. General duties of. It is the duty of the clerk:

First. To call meetings of the board at the request of two members, and to act as clerk of the board, and keep a record of its proceedings, and an accurate account of the receipts and expenditures of school moneys.

Second. To keep his records and accounts open to the inspection of the electors of the district, in suitable books provided by the board of school trustees for that purpose.

Third. To place the monthly journal designated as the official organ of the department of public instruction in the school district library each month; and if he fails to receive it regularly, to immediately notify the publishers of such fact.

Fourth. To perform such other duties as may be prescribed by the board. En. March 12, 1872. Am'd. 1889, 188; 1891, 160; 1893, 253.

§ 1651. When to provide supplies, etc. The clerk of each district must, under the direction of the board of trustees, provide all school supplies authorized by this chapter, keep the schoolhouse in repair during the time school is taught therein, and exercise a general care and supervision over the school premises and school property during the vacations of the school. En. March 12, 1872. Am'd. 1889, 189; 1893, 253.

§ 1652. When to act as other officers. (Repealed.) En. March 12, 1872. Rep. 1880, 47.

ARTICLE X.

SCHOOLS.

§ 1662. Who may be admitted to.
§ 1663. Schools to be classified.
§ 1664. To be taught in the English language.
§ 1665. Course of instruction.
§ 1666. Other studies.
§ 1667. Instruction in manners, etc.
§ 1668. Physical exercise, etc.
§ 1669. Establishment of high schools.
§ 1670. Same.
§ 1671. Same.
§ 1672. Sectarian books and teachings prohibited.
§ 1673. Duration of daily sessions.
§ 1674. Formation and maintenance of union school districts.

§ 1662. Who may be admitted to. Every school, unless otherwise provided by law, must be open for the admission of all children between six and twenty-one years of age residing in the district, and the board of school trustees, or city board of education, have power to admit adults and children not residing in the district, whenever good reasons exist therefor. Trustees shall have the power to exclude children of filthy or vicious habits, or children suffering from contagious or infectious diseases, and also to establish separate schools for Indian children and for children of Mongolian or Chinese descent. When such separate schools are established, Indian, Chinese, or Mongolian children must not be admitted into any other school; provided, that in cities and towns in which the kindergarten has been adopted or may hereafter be adopted as part of the public primary schools, children may be admitted to such kindergarten classes at the age of four years; and provided further, that in cities or school districts in which separate classes have been or may hereafter be established, for the instruction of

the deaf, children may be admitted to such classes at the age of three years. En. March 12, 1872. Am'd. 1880, 38; 1885, 100; 1891, 160; 1893, 253; 1903, 86.

Cal.Rep.Cit. 82, 592; 82, 593; 82, 594; 99, 29; 107, 191.

§ 1663. Schools to be classified. (1) The public schools of California, other than those supported exclusively by the state, shall be classed as high schools, technical schools, and grammar and primary schools (including kindergarten classes), and no teacher shall be employed to teach in any school if the certificate held by the teacher is of a grade below that of the school or class to be taught; provided, that the holders of existing primary certificates or of the same when hereafter renewed shall be eligible to teach in any of the classes of the schools of the county, or city and county, which the county, or city and county superintendent shall have designated as of the primary grade, or in any school which said superintendent shall have designated as a primary school; and provided further, that nothing herein contained shall be construed as prohibiting the employment of any person holding a valid special certificate for kindergarten work heretofore granted by any county, or city and county, board of education in this state, as a teacher in any kindergarten class of a primary school in the county, or city and county, in which such valid special certificate for kindergarten work shall have been granted. The county, or city and county, board of education must, except in incorporated cities having boards of education, on or before the first day of July of each year prescribe the course of study in each grade of the grammar and primary schools for the ensuing school year.

(2) Except in incorporated cities having boards of education, the county, or city and county, board of education shall provide for a final examination and conferring of diplomas of graduation on those pupils who have satisfactorily completed the course of study provided for the grammar and primary schools of the county.

(3) The county, or city and county, board of education may amend and change, subject to section sixteen hundred and sixty-five of this code, the course of study for the grammar and primary schools, whenever necessary. En. March 12, 1872. Am'd. 1873-4, 97; 1880, 38; 1883, 83; 1889, 189; 1891, 161; 1893, 254; 1901, 670.

§ 1664. To be taught in the English language. All schools must be taught in the English language. En. March 12, 1872.

§ 1665. Course of instruction. Instruction must be given in the following branches in the several grades in which they may be required, viz: Reading, writing, orthography, arithmetic, geography, nature study; language and grammar, with special reference to composition; history of the United States and civil government; elements of physiology and hygiene, with special reference to the effect of alcohol and narcotics on the human system; music, drawing, and elementary bookkeeping, humane education; provided, that instruction in elementary bookkeeping, humane education, elements of physiology and hygiene, music, drawing, and nature study may be oral, no text-books on these subjects being required to be purchased by the pupils; provided further, that county boards of education may, in districts having less than one hundred census children, confine the pupils to the studies of reading, writing, orthography, arithmetic, language and grammar, geography, history of the United States and civil government, elements of physiology and hygiene, and elementary bookkeeping until they have a practical knowledge of these subjects; and it is further provided, that no more than twenty recitations per week shall be required of pupils in the secondary schools, and no pupil under the age of fifteen years in any grammar or primary school shall be required to do any home study. En. March 12, 1872. Am'd. 1873-4, 111; 1880, 39; 1887, 142; 1889, 189; 1891, 161; 1893, 254; 1901, 797.

Cal.Rep.Cit. 107, 191; 107, 192.

§ 1666. Other studies. Other studies may be authorized by the board of education of any county, city, or city and county, but such studies if so authorized shall be in lieu of a corresponding number of such enumerated studies specified in the preceding section and not in addition thereto. En. March 12, 1872. Am'd. 1880, 39; 1893, 254; 1901, 797.

Cal.Rep.Cit. 107, 191; 107, 192.

§ 1667. Instruction in manners, etc. Instruction must be given in all grades of schools and in all classes during the entire school course, in manners and morals, and

upon the nature of alcoholic drinks and narcotics and their effects upon the human system. En. March 12, 1872. Am'd. 1887, 142.

Cal.Rep.Cit. 66, 474; 82, 592.

§ 1668. **Physical exercise, etc.** Attention must be given to such physical exercises for the pupils as may be conducive to health and vigor of body as well as mind, and to the ventilation and temperature of schoolrooms. En. March 12, 1872.

§ 1669. **Establishment of high schools.** High schools may be established and maintained in the manner provided in sections one thousand six hundred and seventy and one thousand six hundred and seventy-one of the Political Code. En. March 12, 1872. Am'd. 1873-4, 97. Rep. 1880, 47. En. Stats. 1887, 125. Rep. 1891, 164. En. Stats. 1893, 268.

Cal.Rep.Cit. 82, 591.

§ 1670. **Same.** First—Any city, incorporated town, or school district accredited by the last preceding school census with a school population of three hundred or more, may, by a majority vote of the qualified electors voting at the election held for the purpose of determining the establishment and maintenance of such high school, establish and maintain a high school at the expense of such city, incorporated town, or school district.

Second—Whenever heads of families equal in number to a majority of the number of heads of families as shown by the last preceding school census, in any city, incorporated town, or school district, accredited by the last preceding school census with a school population of three hundred or more, shall unite in a petition to the board of education or board of school trustees of said city, incorporated town, or school district, for the establishing and maintaining of a high school therein, said board of education or board of school trustees shall petition the county superintendent of schools to call an election in said city, incorporated town, or school district, for the determination of the question.

Third—Within twenty days after receiving said petition from said board of education or board of school trustees, the county superintendent of schools shall call an elec-

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tion therein for the determination of the question, and shall appoint three qualified electors thereof to conduct said election. Said election shall be called by posting notice thereof in five of the most public places in said city, incorporated town, or school district, and by publication in a daily or weekly paper therein, if there be one, for not less than fifteen days. Said election shall be conducted in the manner prescribed for conducting school elections. The ballots at such elections shall contain the words "For high school," and the voter shall write or print after said words on his ballot the word "Yes," or the word "No." It shall be the duty of said election officers to report the result of said election to the county superintendent of schools within ten days subsequent to the holding thereof.

Fourth—When the heads of families equal in number to a majority in each district, as shown by the last preceding school census, residing in two or more contiguous school districts in the same county (provided, that said districts are accredited by said school census with a school population of three hundred or more), shall unite in a petition to the county superintendent of schools for the establishing and maintaining of a union high school district, he shall, within twenty days after receiving said petition, call an election for the determination of the question, and shall appoint three qualified electors in each of the districts petitioning to conduct the election therein. Any head of family residing within the district at the date of petition shall be a competent signer of such petition, whether he shall or shall not have been listed as the head of a family resident in such district at the last preceding school census; and his signature to such petition shall have the same force and effect as if the name of such petitioner had appeared as that of the head of a family in the last preceding school census of such district; provided, that the superintendent of schools may require such petitioner, or another person for him, to certify under oath that the petitioner is the head of a family residing in the district. Said election shall be held separately and simultaneously at the public schoolhouse in each of the districts petitioning, and shall be called by posting notices thereof in three of the most public places in each district, one of which places shall be

the public schoolhouse in each district, at least ten days before said election. Said election shall be conducted by the officers appointed for that purpose, in the manner provided by law for conducting school elections. The ballots at such election in each district shall contain the words "For the union high school," and the voter shall write or print after said words on his ballot the word "Yes," or the word "No." It shall be the duty of the said election officers in each district to canvass the vote at said election, and report the result to the county superintendent of schools within five days subsequent to the holding of said election.

Within ten days after receiving the returns of said election, the superintendent of schools shall combine the votes "for" and "against" the establishment of the high school district and declare such result by filing a certificate thereof with the county clerk of the county, which certificate shall show the total number of votes cast in each district in which said election was held, in favor of the high school, the total number of votes in each district against the high school, and the aggregate result of said election. It shall also be his duty to record, in a book kept by him for that purpose, the facts set forth in the certificate herein mentioned.

Fifth—If a majority of the votes cast in the election provided for in subdivision three of this section in said city, incorporated town, or school district, shall be in favor of establishing and maintaining a high school therein, it shall be the duty of the county superintendent to call a meeting of the board of education or board of school trustees of said city, incorporated town, or school district, within fifteen days after receiving the returns of the election held therein, by giving at least ten days' notice, in writing, to every member of said board of education or board of school trustees. The board of education or board of school trustees shall, at said meeting, determine the location and the name of the high school.

Sixth—If a majority of the votes cast in the districts petitioning for a union high school shall in the aggregate be in favor of establishing and maintaining a union high school therein, the county superintendent shall, within fifteen days after receiving the returns of the election held therein, direct the board of school trustees in each

of said districts to call a meeting of the qualified electors of their respective districts, in the manner provided in subdivision twenty of section sixteen hundred and seventeen of the Political Code. At said meeting the qualified electors shall in each district select one representative, whose powers and duties shall be as hereinafter specified. The representatives so chosen shall name the school; they shall thereafter notify the county superintendent of schools that they desire to meet to locate the school. The representatives so chosen shall meet in conjunction with the county superintendent of schools, at a time and place to be named by the superintendent, for the purpose of determining the location of the union high school. At such meeting the superintendent shall be the chairman, and shall be entitled to vote and participate in all its proceedings. Should the above representatives fail to unanimously agree upon a location for the high school, they shall propose, in writing, to the county superintendent then present, or if he is not present, they shall transmit to his office within ten days the names of the locations which they favor. Within twenty days after receiving such notice, the superintendent shall call an election as provided in subdivision fourth hereof, to determine the location of the high school. At such election only such sites as have been named by the representatives and certified to the county superintendent shall be voted upon. Any form of ballot by which the voter signifies his choice of location shall be allowed. The result of said election shall be determined and certified to the county superintendent, as provided in said subdivision fourth. The location which receives the largest number of votes shall be chosen as the location of the high school. The representatives shall have power to make arrangements for the temporary location of the high school, and if satisfactory apartments or buildings in a suitable location are offered or can be procured for a consideration or at a rental which would make it advisable to accept the same, they shall have the power to secure or lease such apartments or building for a period not to exceed three years from the date of its acceptance. No change of location of any high school, when once established, shall be made except upon a petition to the county superintendent of schools, signed by two thirds of the heads of families

of the high school district, and then only in accordance with all of the provisions for the original location of the school, as contained in subdivisions four and five of this section.

Seventh—In any city, incorporated town, or school district, which shall have established a high school, the board of education or board of school trustees shall constitute the high school board, and shall have the management and control of said high school.

Eighth—In union high school districts composed of more than two school districts, the high school board shall be composed of one member elected from each district composing the high school district, at the time and in the manner prescribed for the election of school trustees, except as otherwise provided in this act. The superintendent (or superintendents by concurrent action in joint high school districts) shall, in union high school districts composed of three or more school districts, divide the districts composing the union high school district into three classes, as nearly equal in number of school districts as possible, to be designated by him as class A, B, and C, respectively. At the first annual school election following the passage of this act, the districts in class A, as above divided and designated, shall each elect a high school trustee for one year; the districts in class B shall each elect a high school trustee for two years; the districts in class C shall each elect a high school trustee for three years. At each annual election thereafter, as terms of office expire, the high school trustees shall be elected for three years, and in case of expiration of term of appointment, for the unexpired term. Vacancies in the high school board shall be filled by appointment by the county superintendent of schools (and in case of joint union high school districts, by appointment of the county superintendent of the county in which the vacancy occurred), the appointee or appointees to hold until the first day of July succeeding the appointment. The trustees serving on union high school boards, composed of more than two school districts at the time of the approval of this section as hereby amended, shall hold until their successors are elected and shall qualify under the provisions hereof; in the formation of new union or joint union high school districts, the representatives selected according to

the provisions of subdivision sixth of this section shall constitute the union or joint union high school board until the election or appointment and qualification of the regular board as herein provided. In union high school districts consisting of but two school districts, the union high school board shall be composed of the boards of school trustees of both said districts.

Ninth—The union high school board shall meet within ten days subsequent to the locating and naming of the union high school by the parties selected for that purpose, and shall organize by electing a president and a clerk from their own number, to serve until the second Saturday of July next succeeding their election; and thereafter the board shall meet and organize in the same manner on the second Saturday of July of each and every year.

Tenth—The high school boards shall hold regular monthly meetings at the high school building at such time as may be provided in the rules and regulations adopted by them for their own government. Special meetings may be held at the call of the president of the respective boards. Upon the request, in writing, signed by the majority of any board, the president of said board shall call a meeting thereof. Of all special meetings of any board the members thereof shall have at least two days' notice, issued and served by the clerk thereof. At special meetings no business shall be transacted other than as specified in the call therefor; provided, that in union high school districts composed of more than two districts the regular meetings as above provided shall be quarterly; and provided further, that the union high school board in said union high school districts may appoint an executive committee, consisting of the president and secretary and one other member of the board, no two of whom shall be from the same school district, to attend to the routine business of the board, their action to be reported to the board for ratification at its first regular meeting ensuing.

Eleventh—The powers and duties of high school boards shall be such as are now or may hereafter be assigned by law to boards of education or boards of school trustees. In any city, incorporated town, school district or union high school district, which shall have voted to establish and maintain a high school, or which is now maintaining

a high school, the high school board of such high school district may, when in its judgment it is advisable, and must upon a petition of a majority of the heads of families residing in such high school district, call an election and submit to the electors of the high school district whether the bonds of such high school district shall be issued and sold for the purpose of raising money for purchasing high school lots for building, or purchasing one or more high school buildings, for insuring the same, for supplying the same with furniture and necessary apparatus, for improving the grounds, or for any or all of said purposes, for liquidating any indebtedness already incurred for said purposes, and for refunding any outstanding valid indebtedness, evidenced by bonds or the warants thereof. Such election must be called by posting notices signed by the high school board, in three of the most public places in the high school district, for not less than twenty days before the election; and if there is a newspaper published in the county in which said district was organized, by publishing such notice therein not less than once a week for three successive weeks. Such notice must contain: (1) the time and place of holding such election, (2) the names of the inspector and judges to conduct the same, (3) the hours during the day in which the polls will be open, (4) the amount and denomination of the bonds, the rate of interest, and the number of years, not exceeding twenty, the whole or any part of said bonds are to run. Such election shall be conducted in conformity with the provisions of sections one thousand five hundred and ninety-six, one thousand five hundred and ninety-seven, one thousand five hundred and ninety-eight, one thousand five hundred and ninety-nine, one thousand six hundred, one thousand six hundred and one, and one thousand eight hundred and thirty-four of this code, except that the words to appear upon the ballots shall be "High school bonds—yes," or "High school bonds—no." On the seventh day after said election at one o'clock P. M., the returns having been made to the high school board of such high school district, such high school board must meet and canvas said returns, and if it appears that two thirds of the votes cast at said election were cast in favor of issuing such bonds, then such high school board shall cause an entry of that fact to be made upon its

minutes, and shall certify to the board of supervisors of the county in which such district was organized all of the proceedings had in the premises, and thereupon said board of supervisors shall be and it is hereby authorized and directed to issue the bonds of such high school district, to the number and amount provided in such proceedings, payable out of the building fund of such high school district, naming the same, and that the money shall be raised by taxes upon the taxable property in said high school district for the redemption of said bonds and the payment of the interest thereon; provided, that the total amount of bonds so issued shall not exceed five per cent of the taxable property of the high school district as shown by the last equalized assessment of the county or counties in which such district is located. The board of supervisors by an order entered upon its minutes shall prescribe the form of said bonds and of the interest coupons attached thereto, and must fix the time when the whole or any part of the principal of said bonds shall be payable, which shall be not more than twenty years from the date thereof. Said bonds must not bear a greater amount of interest than eight per cent, said interest to be payable annually or semi-annually, and said bonds must be sold in the manner prescribed by the board of supervisors, but for not less than par, and the proceeds of the sale thereof must be deposited in the county treasury to the credit of the building fund of the said high school district, and be drawn out for the purposes aforesaid as other school moneys are drawn out.

The board of supervisors of the county in which such high school district was organized, at the time of making the levy of taxes for county purposes, must levy a tax for that year upon the taxable property in such high school district for the interest and redemption of said bonds, and said tax must not be less than sufficient to pay the interest of said bonds for that year, and such portion of the principal as is to become due during such year, and in any event must be high enough to raise, annually, for the first half of the term said bonds have to run, a sufficient sum to pay the interest thereon; and during the balance of the term high enough to pay such annual interest, and to pay, annually, a proportion of the principal of said bonds, equal to a sum produced by taking the

whole amount of said bonds outstanding and dividing it by the number of years said bonds then have to run; and all taxes so levied, when collected, shall be paid into the county treasury of the county in which such district was organized, to the credit of the building fund of such high school district, and be used for the payment of the principal and interest on said bonds and for no other purpose. The principal and interest on said bonds shall be paid by the county treasurer upon the warrant of the auditor out of the fund provided therefor; and it shall be the duty of the auditor to cancel and file with the treasurer of the county in which such district was organized the bonds and coupons as rapidly as they are paid. That part of any high school district which has been admitted to said high school district from another county, under the provisions of this section, shall be deemed a part of the county wherein such high school district was organized, for all purposes connected with the issuance of the bonds of said high school district, including the levying and collecting of taxes for the payment of the principal and interest of said bonds. If the board of supervisors of any county which has issued bonds under the provisions of this act shall fail to make the levy necessary to pay such bonds or interest coupons at maturity, and the same shall have been presented to the county treasurer, and the payment thereof refused, the owner may file the bond, together with all unpaid coupons, with the state controller, taking his receipt therefor, and the same shall be registered in the state controller's office, and the state board of equalization shall at its next session, and at each annual equalization thereafter, add to the state tax to be levied in said high school district a sufficient rate to realize the amount of principal or interest due prior to the next levy, and the same shall be levied and collected as a part of the state tax and paid into the state treasury and placed to the special credit of such high school district bond tax, and shall be paid by warrants, as the payments mature, to the holders of such registered obligations as shown by the register in the office of the state controller until the same shall be fully satisfied and discharged; any balance then remaining being passed to the general account and credit of said high school district. Whenever any bonds issued under

the provisions of this title shall remain unsold for the period of six months after having been offered for sale in the manner prescribed by the board of supervisors, the high school board of the high school district, for and on account of which such bonds were issued, may petition the board of supervisors of the county in which such high school district was organized to cause such unsold bonds to be withdrawn from the market and canceled. Upon receiving such petition, signed by a majority of the members of said high school board, the said board of supervisors shall fix a time for hearing the same, which shall not be more than thirty days thereafter and shall cause a notice, stating the time and place of hearing, and the object of the petition in general terms, to be published for ten days prior to the day of hearing, in some newspaper published in said high school district, if there is one, and if there is no newspaper published in said high school district, then in a newspaper published at the county seat of the county in which such high school district was organized. At the time and place designated in the notice for hearing said petition, or at any subsequent time to which said hearing may be postponed, the board of supervisors of the county in which such high school district was organized, shall hear any reasons that may be submitted for or against the granting of the petition, and if said board shall deem it for the best interests of the high school district named in the petition, that such unsold bonds be canceled, said board shall make and enter an order in the minutes of its proceedings that said unsold bonds be canceled; and thereupon said bonds and the vote by which they were authorized to be issued shall cease to be of any validity whatever.

Twelfth—The course of study for the respective high schools shall be prepared by the high school board, and, except in cities and incorporated towns, shall be subject to the approval of the county board of education. Said course of study shall embrace a period of not less than three years; and it shall be such as will prepare graduates therein for admission into the state university. The high school board may prescribe an additional course or additional courses of study, subject to the approval as hereinbefore provided. The text-books to be used in all high schools shall be uniform throughout the state, and shall

be adopted by the high school boards, subject to the same restrictions provided for the adoption of the course of study, from a list of books prepared and recommended by the state board of education. The state series shall be used in grades and classes for which they may be adapted.

Thirteenth—Graduates of the grammar schools shall be admitted to the high schools without examination. Other applicants of the high school district may be admitted in accordance with such rules as may be prescribed by the high school board; provided, that no applicant shall be admitted to the high school who has not practically completed the work of the grammar grades of the county in which the high school is located; provided, that in high schools where the course of study embraces a period of four years, pupils who have completed the course of study prescribed for the seventh grade may, upon passing a satisfactory examination, be admitted. Proficiency is to be determined by the principal, subject to approval by the county board of education. The high school board may admit pupils not residing in any high school district upon the payment of such tuition fees as they may deem proper, and all moneys collected from this source shall be paid into the fund provided for the support of the high school.

Fourteenth—In any city, incorporated town, school district or union high school district, which is now maintaining a high school, or which shall have voted to establish and maintain a high school, it shall be the duty of the high school board therein to furnish to the authorities whose duty it is to levy taxes, on or before the first day of September, an estimate of the cost of purchasing a suitable lot, of procuring plans and specifications, and erecting a suitable building, of furnishing the same, and of fencing and ornamenting the grounds, for the accommodation of the school, and of conducting the school for the school year, unless such high school board have secured or leased temporary accommodations or apartments for the use of such high school, as provided in subdivision sixth hereof. If such high school board have secured or leased such temporary quarters, accommodations, or buildings, they shall furnish to such authorities an estimate of the amount of money required to establish, operate, and main-

tain such school in such temporary quarters or location for the ensuing school year. On the first day of September before the time when it will become necessary, by reason of the termination of their lease or agreement, or from any other reason, they shall make arrangements for another lease for a further period not to exceed three years, or they shall furnish to the authorities whose duty it is to levy taxes an estimate of the cost of purchasing a suitable lot, of procuring plans and specifications, and erecting a suitable building, of furnishing the same, and of fencing and ornamenting the grounds, for the accommodation of the school, and of conducting the school for the school year. It shall be the duty of said board, each and every year thereafter, to present to said authorities, on or before the first day of September, an estimate of the amount of money required for conducting the school for the school year; provided, however, that the high school board therein, may, when in its judgment it is deemed advisable, and must upon the petition of a majority of the heads of families residing in said high school district, call an election and submit to the electors of said high school district whether the bonds of said high school district shall be issued and sold for the purposes mentioned in subdivision eleven of this section, and in case said election is determined in favor of the issuance of said bonds, the same shall be issued as provided in subdivision eleven of this section for any or all of the purposes mentioned therein.

Fifteenth—When such estimate shall have been made and submitted it shall be the duty of the authorities whose duty it is to levy taxes in said city, incorporated town, school district, or union high school district, to levy a special tax upon all of the taxable property of said city, incorporated town, school district, or union high school district, sufficient in amount to maintain the high school, or to purchase the site, erect the building, or improve the building or grounds. Said tax shall be computed, entered upon the tax roll, and collected, in the same manner as other taxes are computed, entered, and collected.

Sixteenth—Should the high school board of any city, incorporated town, school district, or union high school district, fail to make the estimate provided for in subdivision fourteen of this section, it shall be the duty of

the superintendent of schools, upon the petition of five qualified electors thereof, to make such estimate.

Seventeenth—Should the authorities whose duty it is to levy the tax, as provided in subdivision fifteen of this section, fail to make the levy provided for, it shall be the duty of the county auditor to make such levy, and add it to the tax roll of said city, incorporated town, school district, or union high school district.

Eighteenth—All moneys collected from the levy of the tax provided for by this section shall be paid, in cities and incorporated towns, into the treasury thereof, to the credit of the high school fund; and said moneys shall be paid out by the treasurers of said cities or towns upon the warrants of the high school board, signed by the president and clerk thereof.

Nineteenth—All moneys collected from said levy in school districts, or union high school districts, shall be paid into the county treasury to the credit of the district high school fund, or the union high school fund, respectively, and shall be paid out on the order of the high school board, signed by the president and clerk thereof, as other school moneys are paid out.

Twentieth—Nothing in this section shall be construed as preventing all of the school districts in any county from uniting to form one or more county high schools; provided, that when any city, incorporated town, school district, or union high school district shall vote to maintain a high school, such territory shall be exempt from taxation to support a county high school; and provided further, that when any city, incorporated town, school district, or union high school district shall establish a high school prior to the submission of the proposition to establish a county high school, the electors of such city, incorporated town, school district, or union high school district shall be excluded from voting upon said proposition; provided further, that in counties where one or more city high schools, district high schools, or union district high schools are maintained, the board of supervisors shall, upon the petition of two thirds of the heads of families in the city high school district, district high school district, and in each school district composing the union high school district or districts, if there be more than one in the county, submit to all the qualified electors of the county

the question of establishing and maintaining a county high school, and shall take such further steps as provided in section sixteen hundred and seventy-one of this act, relating to high schools. If the majority of all the votes cast on the proposition to establish a county high school are in the affirmative the board of supervisors shall, upon the establishment of the same, declare the high school or high schools existing in the county at the time of the election for a county high school, to be lapsed, and the property of such lapsed high school or schools shall be held or sold by the board of supervisors for the benefit of the county high school.

Twenty-first—A school district cannot lie partly within a high school district, or a union or a joint union high school district, and partly without; and in all cases where the boundaries of a school district comprised within any such high school district shall for any cause be changed to include territory not previously in such district, the territory acquired or added to such included district shall become and constitute a part of the high school or union or joint union high school district. Where the boundaries of the districts constituting the union or joint union district are so changed as to increase the number of districts within its territory, the new school district or districts so created shall continue to be part of the high school district, and after the first day of July next succeeding its creation, it shall be entitled to representation upon the high school board.

Twenty-second—Any school district adjacent to a high school, union, or joint union high school district in the same or in an adjoining county, may be admitted to said high school district by action of the board of supervisors of the county in which the school district is located, upon such terms as may be agreed upon between the trustees of the school district seeking admission and the high school board, whenever a majority of the heads of families, as shown by the last preceding school census, shall present to said board of supervisors a petition for such annexation, accompanied by a petition signed by a majority of the members composing the high school board of the district to which admission is desired. Any district contained in a union or joint union high school district may, in like manner, withdraw from such union or joint

union district by action of the board of supervisors of the county in which the district is located, upon such terms as may be agreed upon between the trustees of the school district seeking to withdraw and the high school board, whenever a majority of the heads of families constituting the union or joint union high school district, and two thirds of the heads of families residing in the district seeking to withdraw, according to the number of heads of families shown by the last preceding school census, shall present to such board of supervisors a petition consenting to such withdrawal, accompanied by a like petition signed by a majority of the members composing the high school board. All the provisions relative to the levy and collection of the tax necessary to maintain a union high school district, shall apply to the levy and collection of the tax required for a joint union school district, as in this section provided.

Twenty-third—When the average daily attendance of pupils in any high school during the whole of any school year after the first school year shall be ten, or less than ten, the superintendent of schools shall suspend the school in said district, and shall report the fact to the board of supervisors. Upon receiving such report from the superintendent, the board of supervisors shall declare the high school lapsed, and shall cause the property thereof to be sold. All moneys received from the sale of the property of the high school district, and all moneys in the treasury to the credit of said high school, shall be distributed by the county superintendent to the districts composing the high school district, in proportion to the assessed valuation of property in said districts.

Twenty-fourth—Any high school district that has existed three years or more, whether embracing one or more school districts, union or joint union, now organized and existing, or which may hereafter be established, may disincorporate and be dissolved and disestablished in the following manner: A petition signed by two thirds of the heads of families, as shown by the last preceding school census, of the high school district so petitioning, shall be presented to the county superintendent of public schools, which petition shall set forth briefly the reasons for disincorporation, and shall pray that the question may be submitted to the voters in said district. Upon receiving

such petition the superintendent shall call an election in the city or district, and in each school district of any union high school district so petitioning, and shall submit to the voters therein the question of disincorporation of such high school district. In joint union high school districts the petition shall be presented to the superintendent of each county having territory within the petitioning district, and each superintendent so petitioned shall, within fifteen days after receiving such petition, order an election in the district or districts situate within his own county and forming a part of the joint union high school district petitioning. At the time of calling such election, which in union and joint union districts must be held in all the school districts composing them upon the same day, the superintendent or superintendents must appoint three electors in each school district contained within the high school district petitioning to conduct the election. Notice of election shall be given by posting written or printed notice thereof in at least three of the most public places in the high school district in which the election is called, for at least twelve days next before the day set for such election. In union and joint union districts the said notice shall be given in each school district therein. Said election shall be conducted in the manner provided by law for conducting school elections. The ballots shall have printed on them the words "For disincorporation," and the voters shall write or print thereafter the word "Yes" or the word "No." The election officers shall report the result of such election within five days thereafter to the county superintendent of schools of the counties of which they are residents. If a majority of all the votes cast at such election be opposed to disincorporation, no further petition shall be entertained or election ordered for a similar purpose within three years next following such election. If two thirds of all votes cast at such election be in favor of disincorporation, the superintendent shall, at the end of the existing school year, suspend said high school district, and report the result of the election and the fact of such suspension to the board of supervisors; provided, that when a joint union high school district is disincorporated under the provisions hereof, each of the superintendents of the counties having territory therein shall immediately certify to the others the result

of the election in his own county, and all of them shall join in the order of suspension; and each superintendent shall thereafter, and before the end of the existing school year, report the result of such election and such suspension to the board of supervisors of his county. Upon receiving such report, said boards, and each of them shall, at the first meeting thereafter, make an order declaring said high school district duly disincorporated and disorganized, to take effect at the end of the existing school year. When a city, district, or union high school has disincorporated under the provisions of this section, the property thereof shall be sold and the proceeds of such sale, together with any moneys in the treasury to the credit of such disincorporating high school district, shall be disposed of as in subdivision twenty-third hereof. When a joint union high school is disincorporated under this section the board of supervisors of the county within which the high school building and other property belonging to the disincorporated district is situated, shall sell the same and place the proceeds thereof to the credit of the school districts composing such disincorporated district. Such division of said proceeds shall be in proportion to the value of property in the districts among which division is made, as determined by the last previous assessment for school purposes, and the portions of said proceeds belonging under such division to the districts in other counties than the one in which the sale is made shall be transferred, by the board making the division, to the county or counties within which such school districts are situated; but the joint union high school funds in such counties collected by taxation, for the maintenance of said joint union high school, shall be distributed by the supervisors of such counties to the districts from which they were collected.

Twenty-fifth—When, in consequence of distance or of convenience in traveling, it is more convenient for pupils residing in any high school district to attend the high school in another high school district, the high school board of the latter district may admit such pupils to the high school in their district upon such terms as the two boards may arrange.

Twenty-sixth—(1) When a majority of the heads of families residing in two or more adjacent districts, not in the same county, shall unite in a petition to the county

superintendents of their respective counties for the establishing and maintaining of a joint union high school district, it shall be the duty of said superintendent, within twenty days after receiving said petition, to call an election in the district or districts in his county petitioning, for the purpose of determining the question, and appoint three qualified electors in each district petitioning, to conduct the election therein. Said election shall be called and conducted in all respects as specified in subdivision fourth of this section, and the result thereof shall be reported by the election officers in each district to the superintendents of the counties in which the districts are situated, within five days subsequent to the holding of said election.

(2) If a majority of the votes cast in the district shall, in the aggregate, be in favor of establishing a joint union high school, the county superintendent in each county shall, within fifteen days after receiving the returns of the election, direct the board of trustees in the district, or districts, in his respective county, to call a meeting of the qualified electors, as provided in subdivision sixth of this section. At said meeting the qualified electors in each district shall select representatives, as provided in said subdivision. The representatives so chosen shall meet at a time and place to be agreed upon among themselves, for the purpose of determining the name of the high school. The location of the school shall be determined by the joint action of the representatives chosen and the county superintendents of the counties, in manner and form as provided for the location of union high schools.

(3) The joint union high school board shall be composed as provided in subdivision eighth of this section; and their powers and duties shall be such as are specified in this section for union high school boards; provided, that the estimate provided for in subdivision fourteenth of this section shall be furnished to the authorities in each of the counties in which the districts uniting are situated; and provided further, that the portion of the amount to be raised in each district shall be in proportion to the taxable property therein, as shown by the last preceding assessment roll thereof.

(4) All the provisions relative to the levy and collection of the tax necessary to maintain the high school shall apply to the levy and collection of the tax for joint union

high schools; provided, that the amount collected in each district shall be paid into the treasury of the county in which said district is located, to the credit of a fund to be known as the joint union high school fund, and shall be paid out as provided in subdivision nineteenth of this section. En. March 12, 1872. Rep. 1880, 47. En. Stats. 1893, 268. Am'd. 1895, 289; 1897, 79; 1901, 309.

Cal.Rep.Cit. 82, 591; 118, 116; 118, 118; 118, 119; 118, 121; 124, 696; 124, 698; 124, 699; 129, 600; 129, 601. Sudb. 14—118, 117; 129, 601; 129, 602. Subd. 15—129, 601; 129, 602.

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§ 1671. Same. First—There may be established in any county in this state, one or more county high schools; provided, that at any general or special election held in said county after the passage of this act, a majority of all the votes cast at such election, upon the proposition to establish a high school, shall be in favor of establishing and maintaining such county high school or schools at the expense of said county.

Second—The board of supervisors at any general election to be held in any county after the passage of this act, upon the presentation of a petition signed by fifty or more qualified electors, taxpayers of said county, must submit the question of establishing and maintaining a county high school to the qualified electors thereof. The board of supervisors, if they deem it expedient, may order a special election for such purpose. Said election shall be conducted in the manner prescribed by law for conducting elections. The ballots at such election shall contain the words "For County High School," and the voter shall write or print thereafter on the ballot the word "Yes," or the word "No."

Third—If a majority of all the votes cast on the proposition to establish a county high school are in the affirmative, it shall be the duty of the board of supervisors, within thirty days after canvassing said vote, to locate the school in some suitable and convenient place in said county. The board of supervisors shall also estimate the cost of purchasing a suitable lot, erecting a building, and furnishing the same, for the accommodation of such school, together with the cost of conducting such school for the next twelve months; provided, that the high school board may rent suitable rooms for the accommodation of the school. If rooms can be obtained in public school build-

ings in the place in which said school shall be located, such rooms shall be given the preference.

Fourth—When such estimate shall have been made, the board of supervisors shall thereupon proceed to levy a special tax upon all of the assessable property of the county, except as provided in subdivision twentieth of section one thousand six hundred and seventy of the Political Code, sufficient to raise the amount estimated as necessary for the purchasing of a lot, procuring plans and specifications, erecting a building, furnishing the same, fencing and ornamenting the grounds, and the cost of running said school for the following twelve (12) months. Said tax shall be computed, entered on the tax-roll, and collected in the same manner as other taxes are computed, entered and collected, and the amount so collected shall be deposited in the county treasury, and be known and designated as the county high school fund, and shall be drawn from the treasury as other moneys so appropriated are drawn.

Fifth—When the board of supervisors shall have properly provided and completed the building, together with the necessary fencing of the lot so purchased, they shall cause the same to be deeded to the county board of education, who shall hold the same in trust for the county.

Sixth—It shall be the duty of the county board of education to furnish to the board of supervisors annually, an estimate of the amount of money needed to pay all of the necessary expenses of running said school; to adopt the necessary text-books (the state series shall be used in grades and classes for which they are adapted); to adopt and enforce a course of study for said schools; to employ suitable teachers, janitors, and other employees, and discharge such employees when deemed advisable by them, and to do any and all other things necessary to the proper conduct of the school. The course of study shall embrace a period not less than three years, and it shall be such as will prepare graduates therein for admission to the state university.

Seventh—It shall be the duty of the board of supervisors to include in their annual tax levy an amount sufficient to maintain the county high school; and such amount, when collected and paid into the county treasury, shall be known as the "county high school fund," and may be drawn therefrom in the following manner, for the pur-

pose of defraying the expenses of conducting said county high school: The county board of education shall draw their order on the county superintendent of schools, in the manner and form provided by law for school district trustees drawing orders on their district school funds, and the county superintendent shall draw his requisition on the auditor, who shall draw his warrant on the county treasurer in favor of the person or persons to whom the amount called for in such requisition is due. All orders, requisitions, and warrants, drawn on the "county high school fund," in all other respects, except as specified in this act, shall be subject to the law governing school districts.

Eighth—In case the qualified electors of any county deem it expedient to establish and maintain more than one county high school, then such additional school or schools may be established and maintained in the manner prescribed in this act for establishing and maintaining a county high school.

Ninth—All county high schools shall be open for the admission of graduates holding diplomas from the grammar schools of the county, and to all pupils of the county who can pass the examination for admission. The examination for admission shall be conducted by the county board of education and the principal of the county high school.

Tenth—Nothing in this act shall be construed so as to prevent the principal of the high school from acting as principal of the grammar school of the school district in which the high school is located, if so desired by the trustees of said school district.

Eleventh—All proceedings for the establishment of county and union high schools had prior to the passage and approval of this act are hereby validated and declared legal; and said high schools shall continue under the provisions of the law under which they were established, until the first day of July, one thousand eight hundred and ninety-five; thereafter they shall be conducted in accordance with the provisions of this act. En. March 12, 1872. Rep. 1880, 47. En. Stats. 1893, 274. Am'd. 1895, 296.

Cal.Rep.Cit. 82, 591; 101, 661.

§ 1672. Sectarian books and teachings prohibited. No publication of a sectarian, partisan, or denominational

character must be used or distributed in any school, or be made a part of any school library; nor must any sectarian or denominational doctrine be taught therein. Any school district, town, or city, the officers of which knowingly allow any schools to be taught in violation of these provisions, forfeits all right to any state or county apportionment of school moneys; and upon satisfactory evidence of such violation, the superintendent of public instruction and school superintendent must withhold both state and county apportionments. En. March 12, 1872.

Compare Const. Cal., art. IX, sec. 8.

§ 1673. Duration of daily sessions. No school must be continued in session more than six hours a day; and no pupil under eight years of age must be kept in school more than four hours per day. Any violation of the provisions of this section must be treated in the same manner as a violation of the provisions of the preceding section. En. March 12, 1872.

§ 1674. Formation and maintenance of union school districts. Union school districts may be formed, and union schools may be maintained therein, as in this section provided.

First—When a majority in each district, as shown by the last preceding school census, of the head of families residing in two or more school districts in the same county, shall unite in a petition to the county superintendent of schools for the formation of a union school district, to comprise the districts so petitioning, he shall, within twenty days after receiving said petition, call an election for the determination of the question, and shall appoint three qualified electors in each of the districts petitioning to conduct the election therein. Said election shall be held separately and simultaneously at the public schoolhouse in each of the districts petitioning, and shall be called by posting notices thereof in three of the most public places in each district, one of which places shall be the public schoolhouse in each district, at least ten days before said election. Said election shall be conducted by the officers appointed for that purpose, in the manner provided by law for conducting school elections. The ballots at such election, in each district, shall contain the words, "For the Union School District," and the voter shall write or print after said words on his

ballot the word "Yes" or the word "No." It shall be the duty of said election officers in each district to canvass the vote at said election, and report the result to the county superintendent of schools within five days subsequent to the holding of said election.

Second—If a majority of the vote cast at such election, in each and every of such districts, shall be in favor of such union school district, the county superintendent shall (except in the case of the formation of a union district consisting of but two districts, and as hereinafter provided for in subdivision fourth of this section), within fifteen days after receiving the returns of the election held therein, direct the board of trustees in each of said districts to call a meeting of the qualified electors of their respective districts, in the manner provided in section sixteen hundred and seventeen of this code for calling district meetings. At said meeting the qualified electors shall in each district select one representative, whose powers and duties shall be as hereinafter specified. The representatives so chosen shall name the union school district, and shall have power to make temporary arrangements for the location of one or more union schools therein, and, if satisfactory apartments or buildings in a suitable location are offered or can be procured, for a consideration or at a rental which would make it advisable to accept the same, they shall have the power to secure an option of a lease on such apartment or building for a period not to exceed three years from the first day of July next ensuing. Within forty days after their selection they shall notify the county superintendent of schools that they desire to meet to locate one or more union schools in and for such union district. Thereafter the representatives so chosen shall meet in conjunction with the county superintendent of schools, at a time and place to be named by the superintendent, for the purpose of determining the location of such union school or schools. At such meeting the superintendent shall be the chairman, and shall be entitled to vote and participate in all its proceedings. Should said representatives fail to unanimously agree upon a location for such school or schools, they shall propose in writing to the county superintendent then present, or, if he is not present, they shall transmit to his office, within ten days, the names of the locations which they, or any of them, favor. Within twenty days

after receiving such notice the superintendent shall call an election as provided in subdivision one hereof, to determine the location of the union school or schools. At such election only such sites as have been named by the representatives and certified to the county superintendent shall be voted upon. Any form of ballot by which the voter signifies his choice of location or locations shall be allowed. The result of said election shall be determined and certified to the county superintendent, as provided in said subdivision one. The location or locations which receive the largest number of votes shall be chosen as the location or locations of the school or schools.

Third—A union school district, formed of school districts not all in the same county, is designated a joint union school district.

(1) When a majority in each district, as shown by the last preceding school census, of the heads of families residing in two or more districts, not all in the same county, shall unite in a petition to the county superintendents of their respective counties for the formation of a joint union school district, to comprise the districts so petitioning, it shall be the duty of each of said superintendents, within twenty days after receiving said petition, to call an election in the district or districts in his county petitioning, for the purpose of determining the question, and appoint three qualified electors in each of such petitioning districts, to conduct the election therein. Said election shall be called and conducted in all respects as specified in subdivision one of this section, except that the form of ballot shall be "For the Joint Union School District," and the result thereof shall be reported by the election officers in each district to the superintendent of the county in which such district is situated, within five days subsequent to the holding of said election.

(2) If a majority of the votes cast at such election, in each and every of such districts, shall be in favor of such joint union school district, the county superintendent in each county shall (except in the case of the formation of a joint union district consisting of but two districts, and as hereinafter provided for in subdivision four of this section), within fifteen days after receiving the returns of the election, direct the board of trustees in the district, or districts, in his county, to call a meeting of the qualified

electors, as provided in subdivision two of this section. At said meeting the qualified electors, in each district, shall select a representative, as provided in said subdivision. The representatives so chosen shall meet at a time and place to be agreed upon among themselves, and name the joint union school district. The location of the joint union school, or schools, shall be determined by the joint action of the representatives chosen and the county superintendents of the counties, in manner and form as provided for the location of a union school, or schools.

Fourth—Proceedings for the formation of, or for admission to, a union or joint union school district may be begun at any time, but the schools in the districts uniting to form, or that are admitted to, a union or joint union school district, shall remain under the control of their respective boards of trustees until the first day of July next succeeding the formation of the union or joint union district and the location of the union or joint union school, or schools, or of admission to a union or joint union district, on which first day of July the districts uniting to form the union or joint union school district, or the districts admitted to such union, shall cease to exist, except for purposes specified in this section, and the terms of office of the school trustees in said districts shall expire, and the district property of each district so uniting or admitted shall vest in such union or joint union district and pass to the control of the board of trustees of such district, to be held and disposed of by them, as provided in section sixteen hundred and seventeen of this code; provided, that in union or joint union school districts formed by the union of but two school districts, no selection of representatives, as provided for in subdivision two of this section, is necessary, and the two boards of trustees for the original school districts shall act as the representatives, and shall constitute the board of trustees for the new union or joint union school district, and each of such trustees shall continue in office for the term for which he was elected, except as hereinafter provided; and provided further, that the proceeds of any sale by the board of trustees of the union or joint union school district, of school property that originally belonged to any of the original districts, must first be applied to the discharge of any bonded indebtedness of such original district.

Fifth—In the formation of union or joint union school

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districts, the representatives selected according to the provisions of subdivision two of this section shall act as a board of trustees for such union or joint union district, until the election or appointment and qualification of the regular board of trustees, as hereinafter provided.

Sixth—In union or joint union school districts, formed by the union of more than two school districts, the board of trustees shall be composed of one member elected from each district composing the union or joint union district, at the time and in the manner presented for the election of school trustees, except as otherwise provided in this section. The county school superintendent (or superintendents by concurrent action in joint union school districts) shall, in union or joint union school districts composed of three or more school districts, divide the districts composing the union or joint union school district into three classes, as nearly equal in number of school districts as possible, to be designated by him (or them) as class A, B, and C, respectively. At the first annual school election following the organization of the union or joint union school district and the location of the school or schools, the districts in class A, as so divided and designated, shall each elect a school trustee for one year; the districts in class B shall each elect a school trustee for two years; the districts in class C shall each elect a school trustee for three years; and all the trustees so elected shall constitute the board of trustees of the union or joint union school district. At each annual election thereafter, as terms of office expire, the school trustees shall be elected for three years, and, in case of expiration of term of appointment, for the unexpired term. Vacancies in the board of school trustees shall be filled by appointment by the county superintendent of schools (in case of joint union school districts by appointment by the county superintendent of the county in which the vacancy occurs), the appointee or appointees to hold until the first day of July next succeeding the appointment.

Seventh—In union or joint union school districts formed by the union of but two school districts, the board of trustees of the union or joint union district shall consist of the two boards of trustees of the districts so uniting, and each trustee shall continue to hold office for the term for which he was elected; provided, that should one or more

additional districts at any time be admitted to such union or joint union district, the board of trustees shall then consist of one trustee from each of the original districts, as provided in subdivision six of this section, and the terms of the trustees in the two original districts and of the trustees in the district or districts admitted shall expire on the first day of July next ensuing after the admission of the third district.

Eighth—After the location of the union or joint union school, or schools, has been determined, as provided in subdivision two of this section, the representatives, acting as a board of trustees, or their successors, may erect or lease a suitable building, as they may deem most advisable. A lease shall not be made for a longer period than three years. A building may be erected under the provisions of sections eighteen hundred and thirty to eighteen hundred and thirty-nine, inclusive, of this code, relating to a district tax, or sections eighteen hundred and eighty to eighteen hundred and eighty-nine, inclusive, of this code, relating to the issuance of bonds. In all cases the plans must be approved by the county superintendent of schools of the county in which the schoolhouse is to be located.

Ninth—No change of location of any union or joint union school, when once established, shall be made, except upon a petition to the county superintendent of schools (or superintendents, in case of a joint union district), signed by two thirds of the heads of families residing in such district, as shown by the last preceding school census, and then only in accordance with all the provisions for the original location of the school, as contained in subdivisions two and three of this section.

Tenth—The powers and duties of boards of trustees in union or joint union school districts shall be such as are now, or may hereafter be, assigned by law to boards of school trustees, except as otherwise provided in this section.

Eleventh—Boards of trustees of union or joint union school districts shall hold regular meetings at the school building, at such time as may be provided in the rules and regulations adopted by them for their own government. Such meetings shall not be held less frequently than quarterly. Special meetings may be held at the call of the president of the board. Upon the request, in writing,

signed by a majority of any board, the president of said board shall call a meeting thereof, pursuant to such request. Of all special meetings of any board the members thereof shall have at least two days' notice issued and served by the clerk thereof. At special meetings no business shall be transacted other than as specified in the call therefor; provided, that in union and joint union districts formed by the union of more than three school districts the board may appoint an executive committee, consisting of the president and the clerk and one other member of the board, to attend to the routine business of the board, their action to be reported to the board for ratification at its first regular meeting ensuing.

Twelfth—The course of study shall be that prescribed by the proper authority, and shall embrace a period of not less than eight years, except as may be hereafter provided by law; and the text-books used shall be those adopted by the proper authorities. In joint union districts the provisions of section fifteen hundred and eighty-three of this code shall apply.

Thirteenth—The board of trustees of a union or joint union school district may contract, in such manner as they may deem best, for the transportation, to and from school, of such pupils as may seem to such board to be in need of such transportation, and shall pay for such transportation, in the usual manner, out of any funds available for the purpose; provided, that all such contracts for transportation shall be first approved by the county superintendent (or superintendents) of schools of the county (or counties) in which such district is situated.

Fourteenth—Whenever in their judgment it may be deemed advisable the board of trustees for any union or joint union school district may unite with the trustees of any other school district, single, union or joint, in the employment of a supervising principal, who shall devote such time to the supervision of instruction in the several school districts and shall receive such compensation from each board of trustees as may be agreed upon by them.

Fifteenth—(1) On the first day of July next ensuing after the formation of a union or joint union school district, or the admission thereto of a school district, the county superintendent of schools (or superintendents in joint union school districts) shall transfer, by requisition upon

the county auditor, all funds remaining to the credit of the different districts uniting to form the union or joint union district (or to the credit of the district admitted thereto) to the credit of such union or joint union district.

(2) For the purposes of school census enumeration and the apportionment of school moneys, the several school districts uniting to form a union or joint union school district shall be regarded as continuing their separate existence; provided, that but one census marshal shall be appointed to take the school census for all of such uniting districts, whose duty it shall be to take the census for each and all of such several districts and include the same, separately stated for each district, in one report; and provided further, that no moneys shall be apportioned directly to any of such several districts, while forming a part of an organized union or joint union school district, but there shall be apportioned to such union or joint union district the aggregate of moneys that would be apportioned to the several school districts composing it, if such several districts were not united.

Sixteenth—(1) Any school district may be admitted to a union or joint union school district by action of the board of supervisors of the county in which such school district is located, upon such terms as may be agreed upon between the board of trustees of the school district seeking admission and the board of trustees of the union or joint union school district, whenever a majority of the heads of families residing in such school district, as shown by the last preceding school census, shall present to said board of supervisors a petition for such annexation, accompanied by a petition for such annexation signed by a majority of the members composing the board of trustees of the union or joint union district to which admission is desired. The county superintendent of schools shall then classify the newly admitted district, in class A, B, or C, as provided in subdivision six of this section, for the election of a trustee thereby. If such petitioning school district and such union or joint union school district be not wholly situated in the same county, then said petitions shall be presented in duplicate to the board of supervisors of each and every county in which any part of either of such districts is situated, and such annexation shall be made only by the concurrent action of all of such boards of super-

visors; and in that case the classification of the annexed district, for election of a trustee, shall be made by concurrent action of the county superintendents of each and all of such counties.

(2) A portion of a school district may be admitted to an adjacent union or joint union school district by action of the board of supervisors of the county in which such school district is situated, whenever a majority of the heads of families residing in such school district, as shown by the last preceding school census, shall present to said board of supervisors a petition for such annexation, accompanied by a petition for such annexation signed by a majority of the members composing the board of trustees of the union or joint union district to which admission is desired. The board of supervisors shall attach such annexed portion of a school district to a contiguous original school district forming part of a union or joint union district, for voting and other purposes, and such annexed portion shall thereafter be a part of the original district to which it is so attached, and cannot subsequently withdraw from the union or joint union district, except as the district to which it is so attached withdraws. Such annexed portion shall have no representation on the board of trustees of the union or joint union school district, except as a part of the district to which it is attached. If such portion of a school district and such union or joint union school district be not wholly situated in the same county, then said petitions shall be presented in duplicate to the board of supervisors of each and every county in which any part of either of such districts is situated, and such annexation, and such attachment of annexed portion to one of the original districts, shall be made only by the concurrent action of all of such boards of supervisors.

(3) Any school district contained in a union or joint union school district may, in like manner, withdraw from such union or joint union district by action of the board (or boards) of supervisors of the county (or counties) in which the union or joint union district is located, upon such terms as may be agreed upon between the trustee of the school district seeking to withdraw and a majority of the other members of the board of trustees of the union or joint union district, whenever a majority of the heads of families residing in the union or joint union district, in-

cluding two thirds of the heads of families residing in the district seeking to withdraw, as shown by the last preceding school census, shall present to such board or boards of supervisors a petition for such withdrawal, accompanied by a written consent to such withdrawal signed by a majority of the members composing the board of trustees of such union or joint union district.

Seventeenth—Any union or joint union school district, formed under the provisions of this section, and which shall have been in existence three years or more, may be dissolved in the following manner: A petition signed by two thirds of the heads of families residing in such district, as shown by the last preceding school census, shall be presented to the county superintendent of schools in the county in which such district is situated, setting forth briefly the reasons for dissolution and praying that the question may be submitted to the voters in such district. Upon receiving such petition the superintendent shall, within twenty days, call an election in the district, submitting to the voters therein the question of dissolution of such district. If such petitioning district be not wholly situated within the same county, said petition shall be presented in duplicate to the superintendent of each county having territory within such district, and each superintendent so petitioned shall, within twenty days after receiving such petition call an election in the territory situate within his county and forming part of such district, and appoint three electors resident within such territory to conduct such election therein. Notice of such election, which must be held throughout the district on the same day and during the same hours, shall be given by posting written or printed notice thereof in at least three of the most public places in such district for at least twelve days next before the day set for such election; and if such district be not wholly situated in the same county, said notice shall be posted for said time in three of the most public places in the portion of the district in each county. Said election shall be conducted in the manner provided by law for conducting school elections. The ballots shall have printed on them the words "For dissolution," and the voters shall write or print thereafter the word "Yes" or the word "No." The election officers shall report the result of such election, within five days thereafter, to the county

superintendent of schools of the county of which they are residents. If a majority of all the votes cast at such election be opposed to dissolution, no further petition shall be entertained or election ordered for a similar purpose within three years next following such election. If the district in which such election is held be wholly situated in one county, and if two thirds of all the votes cast at such election be in favor of dissolution, the county superintendent of such county shall forthwith certify the result of such election to the board of supervisors of such county, and such board shall, at its first regular meeting thereafter, make an order declaring such union district dissolved, such order to take effect at the end of the current school year, except as hereinafter provided. If the district in which such election is held be not wholly situated in one county, each of the county superintendents of the counties having territory therein shall immediately certify to the others the result of the election in his own county, and if two thirds of all the votes cast at such election be in favor of dissolution, all of such county superintendents shall, jointly, forthwith certify the result of such election to the board of supervisors of each of such counties, and said boards, and each of them, shall, at the first regular meeting thereafter, make an order declaring such union or joint union district dissolved, such order to take effect at the end of the current school year, except as hereinafter provided. When a union or joint union school district has been thus dissolved, the property thereof shall be sold by the board of supervisors of the county in which such property is situated, and the proceeds of such sale, together with any moneys in the treasury to the credit of such dissolved district, shall be apportioned to and placed to the credit of the school districts that composed such dissolved district, in proportion to the value of property in each of such school districts, as determined by the last previous assessment therein for school purposes, and the board or boards of supervisors of the county or counties in which such dissolved district is situated shall make such orders, and such transfers from county to county, as may be necessary or proper to affect such apportionment. From and after the time of the making of the order or orders hereinbefore provided for, declaring a union or joint union school district dissolved, the original school districts com-

posing the same, with such additional territory as shall have been annexed to them, shall be considered to be in existence again, as separate districts, and subject to the provisions of sections fifteen hundred and ninety-three to sixteen hundred and two of this code, relating to elections for school trustees, the first of such elections in each of such districts to be held as in the case of a newly formed district; but such order or orders shall not affect the continuance of the union or joint union board of trustees, or the maintenance of the union or joint union school until the end of the current school year, at the expiration of which time such board and school shall cease to exist. En. Stats. 1903, 339.

ARTICLE XI.

PUPILS.

§ 1682. Graduates under seventeen years of age. (Repealed.)
§ 1683. Pupils, how admitted.
§ 1684. Must submit to regulations.
§ 1685. Suspension and expulsion of.
§ 1686. Defacing of school property, liabilities for.
§ 1687. Experienced teachers for beginners.

§ 1682. Graduates under seventeen years of age. (Repealed.) En. Stats. 1887, 125. Rep. 1891, 164.

§ 1683. Pupils, how admitted. Pupils must be admitted into the schools in the order in which they apply to be registered. En. March 12, 1872.

Cal.Rep.Cit. 127, 125.

Act to enforce educational rights of children: See General Laws, title Schools.

§ 1684. Must submit to regulations. All pupils must comply with the regulations, pursue the required course of study, and submit to the authority of the teachers of such schools. En. March 12, 1872.

§ 1685. Suspension and expulsion of. Continued willful disobedience, or open defiance of the authority of the teacher, constitutes good cause for expulsion from school; and habitual profanity and vulgarity good cause for suspension from school. En. March 12, 1872.

§ 1686. Defacing of school property, liabilities for. Any pupil who cuts, defaces, or otherwise injures any school-

house, fences, or outbuildings thereof, is liable to suspension or expulsion, and on the complaint of the teacher or trustees, the parents or guardians of such pupil shall be liable for all damages. En. March 12, 1872. Am'd. 1873-4, 112.

§ 1687. Experienced teachers for beginners. In all schools having more than two teachers, beginners shall be taught by teachers who have had at least two years' experience, or by normal school graduates; and in cities such teachers shall rank, in point of salary, with those of the assistant teachers in the highest grade in the grammar schools; and in no case shall boards of education or boards of school trustees draw orders for the salary of any teacher in violation of this provision, nor shall any superintendent draw any requisition for the salary of any teacher in violation thereof. En. March 12, 1872. Am'd. 1889, 190; 1893, 254.

ARTICLE XII.

TEACHERS.

§ 1696. General duties of teachers.
§ 1697. School month defined.
§ 1698. Appeal from premature dismissal by teacher.
§ 1699. Appeal where teacher's salary withheld.
§ 1700. No warrant to be drawn in favor of a teacher unless he perform his duties.
§ 1701. Nor unless he holds certificate and was employed.
§ 1702. Duties of teachers as to ethical instruction.
§ 1703. No section.
§ 1704. Teachers must be eighteen years of age.

§ 1696. General duties of teachers. Every teacher in public schools must,—

First. Before assuming charge of a school, file his or her certificate with the superintendent of schools; provided, that when any teacher so employed is the holder of a California state normal school diploma, accompanied by the certificate of the state board of education, as provided in subdivision third of section one thousand five hundred and three of the Political Code, an educational or a life diploma of California, upon presentation thereof to the superintendent he shall record the name of said holder in a book provided for that purpose in his office, and the holder of said diploma shall thereupon be absolved from the provisions of this subdivision.

Second. Before taking charge of a school, and one week before closing a term of school, notify the county superintendent of such fact, naming the day of opening or closing. Boards of education and boards of school trustees must in every case give to the teacher a notice of at least two weeks of their intention to close the term of school under their charge. No superintendent shall draw any requisition for the last month's salary of any teacher until said teacher has filed with him the notice required by this subdivision.

Third. Enforce the course of study, the use of the legally authorized text-books, and the rules and regulations prescribed for schools.

Fourth. Hold pupils to a strict account for their conduct on the way to or from school, on the playground, or during recess; suspend, for good cause, any pupil from the school, and report such suspension to the board of school trustees or city board of education for review. If such action is not sustained by them, the teacher may appeal to the county superintendent, whose decision shall be final.

Fifth. Keep a state school register, in which shall be left, at the close of the term, a report showing the programme of recitations, classification and grading of all pupils who have attended school at any time during the school year. The superintendent shall in no case draw a requisition in favor of the teacher until the teacher has filed with him a certificate from the clerk of the board of school trustees to the effect that the provisions of this subdivision have been complied with.

Sixth. Make an annual report to the county superintendent at the time and in the manner and on the blanks prescribed by the superintendent of public instruction. Any teacher who shall end any school term before the close of the school year shall make a report to the county superintendent immediately after the close of such term; and any teacher who may be teaching any school at the end of the school year shall, in his or her annual report, include all statistics for the entire school year, notwithstanding any previous report for a part of the year. The superintendent of schools shall in no case draw a requisition for the salary of any teacher for the last month of the school term, until the report required by this subdivision has been filed, and by him approved.

Seventh. Make such other reports as may be required by the superintendent of public instruction, county superintendent, board of school trustees, or city board of education. En. March 12, 1872. Am'd. 1873-4, 98; 1880, 39; 1887, 130; 1889, 190; 1891, 161; 1893, 255.

Teachers' annuity fund, act providing for: See General Laws, title Schools.

§ 1697. School month defined. A school month is construed and taken to be twenty school days, or four weeks of five school days each. En. March 12, 1872.

§ 1698. Appeal from premature dismissal by teacher. In case of the dismissal of any teacher before the expiration of any oral or written contract entered into between such teacher and board of trustees, for alleged unfitness or incompetence, or violation of rules, the teacher may appeal to the school superintendent; and if the superintendent decides that the removal was made without good cause, the teacher so removed must be reinstated, and shall be entitled to compensation for the time lost during the pending of the appeal. En. March 12, 1872. Am'd. 1893, 256.

§ 1699. Appeal where teacher's salary withheld. First, Any teacher whose salary is withheld, may appeal to the superintendent of public instruction, who shall thereupon require the superintendent of schools to investigate the matter and present the facts thereof to him. The judgment of the superintendent of public instruction shall be final; and upon receiving it, the superintendent of schools, if the judgment is in favor of the teacher, shall, in case the trustees refuse to issue an order for said withheld salary, issue his requisition in favor of said teacher.

Second. Should any teacher employed by a board of school trustees for a specified time, leave the school before the expiration of such time, without the consent of the trustees, in writing, said teacher shall be deemed guilty of unprofessional conduct, and the board of education of the county are authorized, upon receiving notice of such fact, to suspend the certificate of such teacher for the period of one year; should said teacher be the holder of an educational or a life diploma, the superintendent of schools shall report the delinquency of the teacher to the state board of education, who are thereupon authorized to

suspend said diploma for the period of one year. En. March 12, 1872. Am'd. 1889, 190; 1893, 256.

§ 1700. No warrant to be drawn in favor of a teacher unless he performs his duties. No warrant must be drawn in favor of any teacher, unless the officer whose duty it is to draw such warrant is satisfied that the teacher has faithfully performed all the duties prescribed in section sixteen hundred and ninety-six. En. March 12, 1872. Am'd. 1873-4, 99.

§ 1701. Nor unless he holds certificate and was employed. No requisition for a warrant shall be drawn in favor of any teacher, unless such teacher is the holder of a proper certificate, in force for the full time for which the requisition is drawn, nor unless he was employed by the board of trustees, or city board of education, or by the superintendent of schools, as provided in section one thousand five hundred and forty-five. En. March 12, 1872. Am'd. 1873-4, 99; 1880, 39; 1881, 44.

§ 1702. Duties of teachers as to ethical instruction. It shall be the duty of all teachers to endeavor to impress on the minds of the pupils the principles of morality, (the) truth, justice, and patriotism; to teach them to avoid idleness, profanity, and falsehood, and to instruct them in the principles of a free government, and to train them up to a true comprehension of the rights, duties, and dignity of American citizenship. En. Stats. 1873-4, 99.

§ 1703. No section. [A new section 1703 was mentioned in the title of act of April 7, 1880, Stats. 1880, p. 28, but no such section was enacted in the act itself.]

§ 1704. Teachers must be eighteen years of age. No person is eligible to teach in any public school in this state, or to receive a certificate to teach, who has not attained the age of eighteen years. En. Stats. 1880, 40.

ARTICLE XIII.

DISTRICT LIBRARIES.

§ 1712. Library fund, how expended.
§ 1713. Of what fund consists.
§ 1714. Same.
§ 1715. Control and location of library.
§ 1716. Who may use.
§ 1717. Powers of trustees.

§ 1712. Library fund, how expended. First. The board of school trustees, and the city board of education in any city, must expend the library fund, together with such moneys as may be added thereto by donation, in the purchase of school apparatus and books for a school library, including books for supplementary work; and no warrant shall be drawn by the superintendent of schools upon the order of any board of trustees against the library fund of any district unless such order is accompanied by an itemized bill, showing the books and apparatus, and the price of each, in payment of which the order is drawn, and unless such books and apparatus have been adopted by the county, or city, or city and county board of education. All orders of the trustees and of boards of education for books or apparatus must in every case be submitted to the superintendent of schools of the county, or city, or city and county, respectively, for his approval, before said books or apparatus shall be purchased.

Second. The trustees of each district shall cause each book now in their district school library, or that may hereafter be placed in said library, to be stamped on the fly-leaf, on the title page, and on each one hundredth page of the book, with the words, "Department of Public Instruction, State of California, ——— County, ——— District Library," and the county superintendent is hereby authorized and instructed to procure such stamp for each district in his county, and to pay for the same out of the county school fund of such district. En. March 12, 1872. Am'd. 1873-4, 99; 1880, 40; 1881, 44; 1889, 191; 1893, 256.

§ 1713. Of what fund consists. Except in cities not divided into school districts the library fund shall consist of not less than five nor more than ten per cent of the county school fund annually apportioned to the district; provided, that should ten per cent exceed fifty dollars,

fifty dollars only shall be apportioned to the district; except that in districts having five or more teachers, there shall be apportioned a sum not less than ten dollars nor more than fifteen dollars for each teacher employed; and provided further, that the school trustees of each district in the county shall, in the month of July in each year, notify the superintendent of the county as to what amount they desire to be apportioned for their respective districts for the year. En. March 12, 1872. Am'd. 1893, 257; 1903, 363.

§ 1714. **Same.** In cities not divided into school districts, the library fund shall consist of a sum not to exceed fifty dollars for every one thousand children, or fraction thereof of five hundred or more, between the ages of five and seventeen years, annually taken from the city or county school fund apportioned to the city. The superintendent shall apportion the library fund in cities not divided into districts among the several schools in proportion to the average number of children belonging to each school. En. March 12, 1872. Am'd. 1881, 44; 1893, 257.

§ 1715. **Control and location of library.** Libraries are under the control of the board of trustees, or city board of education, and must be kept, when practicable, in the schoolhouses. En. March 12, 1872. Am'd. 1880, 40.

§ 1716. **Who may use.** The library is free to all pupils of a suitable age belonging to the school, and any resident of the district may become entitled to its privileges by the payment of such a sum of money for life membership, or such annual or monthly fee, as may be prescribed by the trustees. En. March 12, 1872.

§ 1717. **Powers of trustees.** The trustees shall be held accountable for the proper care and preservation of the library, and shall have power to assess and collect all fines, penalties, and fees of membership, and to make all needful rules and regulations not provided for by the state board of education, and not inconsistent therewith, and they shall report annually to the county superintendent all library statistics which may be required by the blanks furnished for the purpose by the superintendent of public instruction. En. Stats. 1873-4, 100.

ARTICLE XIV.

EDUCATIONAL JOURNAL.

§§ 1726-1731. (Repealed.) En. March 12, 1872. Rep. 1875-6, 27.

ARTICLE XV.

STATE BOARD OF EXAMINATION.

§§ 1741-1755. En. March 12, 1872. Rep. 1880, 47. Sec. 1744 amended 1873-4, 100; sec. 1746 amended 1873-4, 100; 1877-8, 29; secs. 1747-1752 amended 1873-4, 101; sec. 1753 amended 1873-4, 102; 1875-6, 28.

§ 1756. En. March 12, 1872. Rep. 1873-4, 84.

§ 1757. En. March 12, 1872. Rep. 1893, 276.

§ 1758. En. March 12, 1872. Rep. 1880, 47.

ARTICLE XVI.

COUNTY BOARDS OF EDUCATION.

§ 1768. County boards, how composed.
§ 1769. President and ex-officio secretary. (Repealed.)
§ 1770. Meetings and compensation.
§ 1771. Power of county boards.
§ 1772. Certificates, to whom to be issued.
§ 1773. Examination, how conducted.
§ 1774. Standing to be indorsed on certificate.
§ 1775. Granting and renewal of certificates.
§ 1776. Certificates to graduates of normal school.
§ 1777. Compensation of board. (Repealed.)
§ 1778. Permanent certificates.

§ 1768. **County boards, how composed.** First—Except in any city and county, there shall be a county board of education, which shall consist of the county superintendent of schools and of four other members, appointed by the board of supervisors of the county.

Second—A majority of the members appointed by the board of supervisors shall be experienced teachers, holding not lower than grammar school certificates in full force and effect.

Third—At their last regular meeting preceding the first day of July, in the year nineteen hundred and three, the board of supervisors shall appoint two persons to serve on said board of education for the period of two years; and thereafter, each and every year, the board of supervisors at the last regular meeting preceding the first day of July, shall appoint two persons to serve on said

board of education for the period of two years; provided, that in all counties in which there are one or more high schools at least one of the appointive members of the board of education for such county or counties shall hold a certificate of the high school grade.

Fourth—If the board of supervisors of any county refuse or neglect to appoint members of the county board of education, as provided in subdivision three of this section, it shall be the duty of the county superintendent to appoint them. Should a vacancy occur at any time in the county board of education, it shall be the duty of the board of supervisors to appoint a party to fill such vacancy.

Fifth—The members of the county board of education, elected or appointed, shall qualify within ten days after receiving notice of their election or appointment.

Sixth—The county board of education shall organize on the first meeting subsequent to the first day of July in each year, by electing one of their number president of the board. The county superintendent shall be ex officio secretary of the board.

Seventh—For the transaction of business three members shall constitute a quorum; but no teacher's certificate shall be issued, renewed, or revoked, nor shall any books or apparatus be adopted, except by an affirmative vote of at least three members of the board. On the call of any member, the ayes and nays shall be taken upon any proposition, and the vote shall be recorded in the minutes of the board. En. March 12, 1872. **Am'd.** 1875-6, 28; 1880, 40; 1889, 191; 1893, 257; 1903, 360.

Cal.Rep.Cit. 109, 151.

§ 1769. **President and ex-officio secretary.** (Repealed.) En. March 12, 1872. **Am'd.** 1875-6, 28; 1880, 41. **Rep.** 1893, 276.

§ 1770. **Meetings and compensation.** (1) Each county board of education shall meet annually at such time as they may determine. Special meetings may be called by the superintendent whenever, in his judgment, the exigencies of the schools may require them to be held. Upon the request of any three members, in writing, the superintendent shall call a special meeting. Notice of

all annual meetings shall be given by the secretary at least ten days prior to the time of meeting. No business shall be transacted at a special meeting, except as provided in subdivision two of this section, other than such as may be specified in the call of the secretary.

(2) At the annual meeting only, the board shall examine applicants for certificates to teach in the public schools. All examination papers for teachers' certificates shall be kept on file in the office of the superintendent of schools for at least one year, and shall be open for the inspection of the applicants or their authorized agents. Certificates upon credentials may be granted, and unexpired certificates may be renewed, at any meeting of the board.

(3) The board of supervisors shall allow to each member of the county board of education a compensation of five dollars a day for his services and the same rate of mileage as is allowed to the members of the board of supervisors of the county. The secretary shall be allowed the sum of five dollars per day for the actual time that the board may be in session; said compensation of the members of the board, and of the superintendent, shall be payable out of the same fund and in the same manner as the salary of the superintendent of schools is paid.

(4) All expenses for printing required by the county board of education, and all incidental expenses incurred for stationery or other purposes in the performance of their duties, shall be audited and paid as other claims against the general fund of the county are paid. En. March 12, 1872. Am'd. 1873-4, 102; 1877-8, 30; 1880, 41; 1881, 44; 1889, 191; 1893, 258; 1901, 670.

Cal.Rep.Cit. 104, 259. Subd. 3—136, 376.

§ 1771. Power of county boards. County boards of education have power:

(1) To adopt rules and regulations, not inconsistent with the laws of this state, for their own government.

(2) To prescribe and enforce rules for the examination of teachers, to examine applicants for grammar school certificates and special certificates, and to establish a standard of proficiency which will entitle the person examined to a certificate.

(3) To grant, in accordance with sections seventeen

hundred and seventy-two and seventeen hundred and seventy-five of this code, the following certificates, renewable at the option of the board:

(a) High school certificates, authorizing the holders to teach in any high school in the county; or in any primary or grammar school in the county.

(b) Grammar school certificates, authorizing the holders to teach in any grammar or primary school in the county.

(c) Kindergarten-primary certificates, authorizing the holders to teach in the kindergarten class of any primary school in the county.

(d) Special certificates, authorizing the holders to teach in the schools of the county such special branch or branches of learning and in such grades as are named in such certificates.

(4) To grant, in accordance with subdivision four of section seventeen hundred and seventy-five of this code, permanent certificates of the grade and kind designated therein. Every certificate that is not a permanent certificate shall be valid for six years; provided, that when any certificate shall be granted on a recommendation that has been given for a limited period only, such certificate shall not be valid for a longer period than that specified in the recommendation. All certificates must be issued upon the blank forms prepared by the superintendent of public instruction, and must have the impress of the seal of the board.

(5) To adopt a list of books and apparatus for district school libraries, and, except in cities having a city board of education, to prescribe and enforce in the public schools a course of study and the use of a uniform series of textbooks.

(6) To revoke or suspend for immoral or unprofessional conduct, or evident unfitness for teaching, the certificates granted by them.

(7) To keep a record of their proceedings.

(8) To issue diplomas of graduation from any of the public schools of the county, except in cities having boards of education, which diplomas shall be designed by the superintendent of public instruction, and be distributed as other blanks from his office. Said diplomas of graduation shall be signed by the president and secretary of the county board and by the principal of the school.

(9) To adopt and use, in authentication of their acts, an official seal, and to have such printing done as may be necessary in the discharge of their duties. En. March 12, 1872. Am'd. 1875-6, 29; 1880, 41; 1881, 44; 1887, 129; 1889, 192; 1891, 162; 1893, 259; 1901, 671.

Cal.Rep.Cit. 107, 192; 109, 147; 117, 523; 117, 527; 128, 447.

Subd. 5. Compare Const. Cal., art. IX, sec. 7.

§ 1772. Certificates, to whom to be issued. County boards of education may, on examination, grant certificates as follows:

(1) Grammar school certificates: To those who have passed a satisfactory examination in the following studies: Reading, English grammar and advanced composition, English and American literature, orthography and defining, penmanship, drawing, vocal music, bookkeeping, arithmetic, algebra to quadratics, plane geometry, geography (physical, political, and industrial), elementary physics, physiology and hygiene, history of the United States and civil government, history (ancient, medieval and modern), school law, methods of teaching.

(2) Special certificates: To those who, by examination or any credentials, or by both, shall satisfy the board of their special fitness to teach one or more of the particular studies for which special certificates may be granted, and who shall satisfy the board of their proficiency in English grammar, orthography, defining, and methods of teaching. No special certificate shall be granted to teach, in any school, studies other than drawing, music, physical culture, and commercial, technical or industrial work. En. March 12, 1872. Am'd. 1873-4, 102; 1875-6, 28; 1880, 42; 1889, 193; 1893, 260; 1901, 672.

§ 1773. Examination, how conducted. All examinations shall be in writing in answer to questions formulated by the board of education. The said board shall also examine all applicants, orally, touching the questions asked and such other matters in connection therewith as shall have a tendency to demonstrate the fitness of the applicant to assume the duties of teacher. The said board shall ask questions of practical utility, with a view of ascertaining the knowledge and ability of the applicant. All examinations shall be public. En. March 12, 1872. Am'd. 1873-4, 103; 1887, 130; 1889, 193.

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§ 1774. **Standing to be indorsed on certificate.** The standing of each applicant in each study, and in the class, must be indorsed on the back of each certificate issued upon examination, otherwise it is not a valid certificate. En. March 12, 1872. Am'd. 1880, 42.

§ 1775. **Granting and renewal of certificates.** (1) County boards of education may, without examination, grant certificates as follows:

(a) High school certificates: (1) To the holders of credentials approved by the state board of education in accordance with subdivision two of section fifteen hundred and twenty-one of this code; (2) to the holders of special credentials issued by said state board, in accordance with said subdivision; (3) to holders of high school certificates issued by any county, or city and county, board of education in this state; (4) to holders of normal school diplomas accompanied by documents from the faculty of the state university, provided for in subdivision five of section fifteen hundred and three of this code.

(b) Grammar school certificates: To the holders of the following credentials: (1) Life diplomas or certificates of any state; provided, the state board of education in this state shall have decided that said diplomas or certificates represent experience and scholarship equivalent to the requirements for the elementary life diploma in California; (2) California state normal school diplomas, San Francisco city normal school diplomas heretofore granted, and other normal school diplomas; provided, that the state board of education of this state shall have recommended the normal school issuing said diploma as being of equal rank with the state normal schools of California; (3) Diplomas from the University of California, or from any other university that shall be declared by the state board of education to be of equal rank with the University of California, when the holders have completed the prescribed course in the pedagogical department of the state university, or a pedagogical course that said state board shall declare to be equivalent to such prescribed course, and have been recommended by the faculty of the university issuing such diploma; (4) Grammar school or grammar grade certificates of any county, or city and county, of California.

(c) Kindergarten-primary certificates: (1) To the holders of kindergarten-primary certificates of any county, or city and county, of California; (2) to the holders of diplomas of graduation from the kindergarten department of any state normal school of this state; (3) to the holders of credentials, showing that the applicant has had professional kindergarten training in an institution approved by the state board of education, and also general education equivalent to the requirements for graduation from the kindergarten department of a California state normal school.

(2) Grammar school certificates may be granted to the holders of primary grade certificates who shall pass satisfactory examinations in such branches as do not appear on their certificates, or in the record of the examination upon which the original certificate was granted.

(3) All certificates and diplomas now valid in California shall continue in force and effect for the full term for which they were granted. County boards of education may renew any certificate issued by them prior to the adoption of this law, and now in force, and may renew certificates granted by authority of this law. Renewed certificates shall be valid for a period equal to that for which they were originally granted.

(4) When the holder of any certificate or state diploma shall have taught successfully in the same county, or city and county, for five years, the board of education of such county, or city and county, may grant a permanent certificate of the kind and grade of the class in which said applicant has been teaching, valid in the county, or city and county, in which issued, during the life of the holder, or until revoked for any of the causes designated in subdivision four of section seventeen hundred and ninety-one of this code; provided, that such permanent certificate shall in no case be of a higher grade than the grade of the certificate or state diploma on which the teaching has been done; and for a permanent high school certificate twenty months of said teaching shall have consisted of regular high school work; and provided further, that a certificate when renewed the second time, or any time thereafter, shall become, by such renewal, a permanent certificate, if the holder of said certificate shall have complied with all of the conditions of this subdivision.

(5) Whenever any holder of a diploma from the state university, or from any other university that shall be declared by the state board of education to be of equal rank with the state university, shall present to said state board satisfactory evidence of having had two years' successful experience as a teacher, subsequent to graduation, accompanied by satisfactory evidence that such holder has completed the prescribed course in the pedagogical department of the University of California, or a pedagogical course equivalent thereto, the state board of education shall grant to the holder of said university diploma a document signed by the president and secretary of the state board, showing such fact, and said diploma accompanied by said document of the state board attached thereto, shall become a permanent certificate of qualification to teach in any grammar or primary or high school in the state, valid until such time as the said document shall be revoked by said state board of education, for any of the causes shown in subdivision four of section seventeen hundred and ninety-one of this code. En. March 12, 1872. Am'd. 1873-4, 103; 1875-6, 29; 1877-8, 30; 1880, 42; 1881, 45; 1889, 193; 1891, 163; 1893, 260; 1901, 673.

Cal.Rep.Cit. 117, 524; 128, 445; 128, 446; 128, 448.

§ 1776. Certificates to graduates of normal school. Any member of a county board of education or of a city board of examination who shall, except in the regular course of study in the public schools, teach any classes where pupils are given special instruction to prepare them for passing examination to obtain teachers' certificates, or who shall give special instruction to any person preparing for examination to obtain a teachers' certificate, shall be deemed guilty of a misdemeanor, and upon conviction thereof, his office shall be declared vacant. No certificate shall be issued to any applicant who has received special instructions, when preparing for examination, from any member of a county board of education, or of a city board of examination. En. March 12, 1872. Rep. 1873-4, 111. En. Stats. 1889, 196. Am'd. 1893, 261.

§ 1777. Compensation of board. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 103. Rep. 1880, 47.

§ 1778. Permanent certificates. County or city and county boards of education shall have the power to issue

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permanent certificates valid, within the county or city and county in which issued, during the life of the holder, or until revoked for any of the causes shown in subdivision four of section seventeen hundred and ninety-one of this code. Said permanent certificates shall be issued on the following credentials and conditions:

1. Whenever the holder of any certificate shall have taught successfully in the same county or city and county for five years the board of education of said county or city and county may, in addition to or in place of the renewal of such certificate, grant a permanent certificate of the kind and grade of the class in which said applicant has been teaching; provided, that in the issuance of a permanent high school certificate at least twenty months' successful high school experience, taught upon a high school certificate, shall be included in the five years' experience required.

2. Whenever the holder of any certificate shall have successfully completed five years of successful experience in any county or city and county, the board of education of said county or city and county may, upon application and under the other conditions named in this section, grant to said applicant a permanent certificate.

3. Whenever the holder of any life or educational diploma shall have complied with the conditions as enumerated in subdivision one of this section, the said board of education shall, without fee, issue upon application, a permanent certificate of the grade of said life or educational diploma.

4. No permanent certificate shall be of a higher grade or, if special, of a different kind from the certificate upon which granted.

5. Upon the presentation of any certificate, except the primary grade, for renewal for the second time, or for any time thereafter, the board of education, in renewing said certificate shall, by such renewal, cause such certificate to become permanent; provided, the applicant for said renewal shall have complied with the other conditions of this section.

(b) And it shall be the duty of the county superintendent to attach to said certificate a document giving it the full force and effect of a permanent certificate within said county or city and county.

6. Each applicant for a permanent certificate must present to the county or city and county board of education satisfactory evidence of the experience upon which said permanent certificate may be issued.

7. All permanent certificates shall be upon blank forms prepared by the state superintendent of public instruction. En. Stats. 1901, 665.

ARTICLE XVII.

CITY BOARDS OF EXAMINATION.

§ 1787. May be a board in cities of first, second, and third class.
§ 1788. How constituted.
§ 1789. Chairman.
§ 1790. Meetings and examinations.
§ 1791. General powers.
§ 1792. Certificates, granting or renewal of.
§ 1793. Teachers' eligibility; how dismissed.
§ 1794. Compensation allowed.

§ 1787. May be a board in cities of first, second, and third class. In every city of the first, second or third class, having a board of education, and in every city and county, there may be a city, or city and county, board of examination. En. March 12, 1872. Am'd. 1880, 42; 1881, 45; 1893, 261; 1901, 674.

§ 1788. How constituted. Each city, or city and county, board of examination shall consist of the city, or city and county, superintendent of schools, and four other members, residents of such city, or city and county, all of whom shall be experienced teachers, elected by the city, or city and county, board of education, unless otherwise provided by law and holding office for four years. En. March 12, 1872. Am'd. 1880, 42; 1881, 45; 1893, 261; 1901, 674.

§ 1789. Chairman. The city, or city and county, superintendent of schools is chairman of the city, or city and county, board of examination. En. March 12, 1872. Am'd. 1881, 46; 1901, 675.

§ 1790. Meetings and examinations. The city, or city and county, board of examination must meet and hold examinations for the granting of teachers' certificates annually, at such times as they may determine. They may also hold monthly meetings for the transaction of such

other business as may come before them. Special meetings may be called by the city, or city and county, superintendent, when in his judgment the same are necessary; and on the recommendation, in writing, of any three members of the board, the city, or city and county, superintendent shall call a special meeting. No business shall be transacted at any special meeting except such as is indicated in the call therefor; and of all such meetings, due notice shall be given to each member of the board. The place of meeting shall be designated by the chairman. The meetings of the city, or city and county, board of examination shall be public and a record of their proceedings shall be kept in the office of the city, or city and county, superintendent of schools. En. March 12, 1872. Am'd. 1873-4, 103; 1877-8, 31; 1880, 42; 1881, 46; 1893, 261; 1901, 675.

§ 1791. **General powers.** Each city, or city and county, board of examination has power:

First—To adopt rules and regulations, not inconsistent with the laws of this state, for its own government and for the examination of teachers.

Second—To examine applicants, and to prescribe a standard of proficiency which may entitle the person examined to receive: (a) A city, or city and county, grammar school certificate, valid for six years, authorizing the holder to teach any primary or grammar school or class in such city, or city and county; (b) A city, or city and county, special certificate, valid for six years, authorizing the holder to teach such special subjects in any school of the city, or city and county, and in such grades as are designated in such certificate. Applicants for special certificates by examination or any credentials, or by both, shall satisfy the board of their special fitness to teach one or more of the particular studies for which special certificates may be granted, and shall satisfy the board of their proficiency in English grammar, orthography, defining, and methods of teaching. No special certificates shall be granted to teach, in any school, studies other than drawing, music, physical culture, and commercial, technical or industrial work.

The board of examination shall report the result of the examination to the city, or city and county, board of edu-

cation; and said board of education shall thereupon issue to the successful applicants the certificates to which they shall be entitled.

Third—For immoral or unprofessional conduct, profanity, intemperance, or evident unfitness for teaching, to recommend to the city, or city and county, board of education, the revocation of any certificates previously granted by said board of education in such city, or city and county. En. March 12, 1872. Am'd. 1873-4, 104; 1880, 42; 1881, 46; 1891, 163; 1893, 262; 1901, 675.

§ 1792. **Certificates, granting or renewal of.** The city, or city and county, boards of examination may also recommend the granting of city, or city and county, certificates, and the renewal thereof, in the manner provided for the granting and renewal of county certificates by county boards of education in section seventeen hundred and seventy-five of this code. En. March 12, 1872. Am'd. 1873-4, 104; 1875-6, 30; 1881, 46; 1889, 193; 1891, 164; 1893, 262; 1901, 676.

§ 1793. **Teachers' eligibility; how dismissed.** (1) The holders of city, or city and county, certificates are eligible to teach in the cities, or cities and counties, in which such certificates were granted, in schools or classes of grades corresponding to the grades of such certificates, and when elected shall be dismissed only for insubordination or other causes, as mentioned in section seventeen hundred and ninety-one of this code, duly ascertained and approved by the boards of education of such cities, or cities and counties.

(2) City superintendents of public schools, elected by city boards of education, shall be elected for a term of four years, and said city boards of education shall have full power to fix the salary of all employees.

(3) The holders of special city, or city and county, certificates are eligible to teach the special branches mentioned in their certificates, in the grades of all the schools in the city, or city and county, in which such certificates were granted, corresponding to the grade of said special certificates. En. March 12, 1872. Am'd. 1877-8, 30. Rep. 1880, 47. En. Stats. 1881, 46. Am'd. 1891, 164; 1893, 262; 1901, 676.

Cal.Rep.CR. 82, 489; 82, 491; 82, 494; 82, 496; 97, 444; 97, 608; 107, 94.

§ 1794. Compensation allowed. The members of the city board of examination shall receive such compensation as may be allowed them by the city board of education, payable out of the city school fund. En. March 12, 1872. Am'd. 1881, 47.

ARTICLE XVIII.

COUNTY SCHOOL TAX.

§ 1817. Estimate of county school fund.
§ 1818. Levy of county tax.
§ 1818a. Teachers' salary fund.
§ 1819. Duty of auditor if supervisors fail to make levy.
§ 1820. Proceeds of tax to be paid into the county school fund.

§ 1817. Estimate of county school fund. The county superintendent of every county having a population of less than three hundred and forty thousand inhabitants must, on or before the first regular meeting of the board of supervisors, in September in each year, furnish the supervisors and the auditor, respectively, an estimate, in writing, of the minimum amount of county school fund needed for the ensuing year. This amount he must compute as follows: 1905- 625-

First—He must ascertain, in the manner provided for in subdivisions one and two of section eighteen hundred and fifty-eight, the total number of teachers for the county.

Second—He must calculate the amount required to be raised at five hundred dollars per teacher. From this amount he must deduct the total amount of state apportionment, and the remainder shall be the minimum amount of county school fund needed for the ensuing year; provided, that if this amount is less than sufficient to raise a sum equal to six dollars for each census child in the county, then the minimum amount shall be such a sum as will be equal to six dollars for each census child in the county. En. Stats. 1873-4, 105. Am'd. 1880, 43; 1889, 194; 1893, 263; 1903, 162.

Cal.Rep.Cit. 97, 436; 102, 472; 124, 697.

§ 1818. Levy of county tax. The board of supervisors of every county having less than three hundred and forty thousand inhabitants must, annually, at the time of levying other county taxes, levy a tax, to be known as the county school tax, the maximum rate of which must not exceed fifty cents on each one hundred dollars of taxable property 1905- 625-

in the county, nor the minimum rate be less than sufficient to raise a minimum amount reported by the county superintendent, in accordance with the provisions of the preceding section. The supervisors must determine the minimum rate of the county school tax as follows: They must deduct fifteen per cent from the equalized value of the last general assessment roll and the amount required to be raised, divided by the remainder of the assessment roll, is the rate to be levied; but if any fraction of a cent occur, it must be taken as a full cent on each one hundred dollars.

(A) In every county, or city and county, constituting but one school district, a portion of the school funds for any fiscal year subsequent to the present fiscal year equal in amount to the sum total of teachers' salaries for the next preceding fiscal year payable out of the school fund in question, shall constitute a special fund, to be used only for the payment of teachers' salaries as hereinafter provided, and to be known as the teachers' salary fund; provided, that no portion of any school fund consisting of moneys which are applicable exclusively to some special purpose defined by statute other than the payment of teachers' salaries shall be deemed a part of such school fund for the purposes of this act. Out of the teachers' salary fund shall be paid the salaries of all teachers holding in the fiscal year positions which existed in the preceding fiscal year. No other demands whatsoever shall be paid out of such fund. If, by any increase in the rate of salaries, or for any other cause, such fund should be insufficient to pay all of the salaries which constitute demands against it such fund shall be divided pro rata among such demands, and the portion of such demands unpaid shall be payable out of any available money in the school fund of which said teachers' salary fund constitutes a part. If teachers' positions other than or in addition to those which existed in the preceding fiscal year are created, the salaries of teachers holding such different or additional positions shall not be paid out of the teachers' salary fund, but out of any other available moneys; but the amount of such salaries shall be included in determining the amount of the teachers' salary fund for the succeeding fiscal year. If there remain in any fiscal year any money in any teachers' salary fund after the payment

of all legal demands for such year against such fund, such money so remaining shall be transferred to the general school fund of which said teachers' salary fund is a part, and shall become available for the payment of any unpaid lawful demands against such general fund. It shall be the duty of any officer whose duty it is to audit demands against the school fund of any such county, or city and county, in this state, on or before the first Monday of the fiscal year, to file with the board of supervisors of such county, or city and county, and with the officer whose duty it is to pay demands against the school fund of any such county, or city and county, a certified copy of the statement made by him of the amount of money used in such county, or city and county, for the payment of teachers' salaries for the next preceding fiscal year, and no demands against the school funds of such county, or city and county, shall be allowed, audited, or paid until said copies shall have been filed, as aforesaid. The allowance, audit, or payment of any demand out of a teachers' salary fund in violation of this act, may be enjoined by the suit of any teacher whose salary is payable from said fund. The members of the governing body of any such county, or city and county, in this state, who shall pass a demand against said teachers' salary fund in violation of the provisions of this act, and any officer whose duty it is to audit demands against such fund and who shall audit a demand against said teachers' salary fund in violation of the provisions of this act, and any officer whose duty it is to pay demands against such funds, and who shall pay a demand against said teachers' salary fund in violation of this act, shall each be jointly and severally liable therefor to any teacher whose salary is payable from said fund who shall have been damaged by the allowance, audit, and payment of such demand. En. March 12, 1872. Am'd. 1873-4, 105; 1880, 43; 1903, 403.

Cal.Rep.Cit. 97, 436; 124, 697.

§ 1818a. Teachers' salary fund. In every county, or city and county, constituting but one school district, a portion of the school funds for any fiscal year subsequent to the present fiscal year equal in amount to the sum total of teachers' salaries for the next preceding fiscal year payable out of the school fund in question, shall constitute a special fund, to be used only for the payment of teachers'

salaries as hereinafter provided, and to be known as the teachers' salary fund; provided, that no portion of any school fund consisting of moneys which are applicable exclusively to some special purpose defined by statute other than the payment of teachers' salaries shall be deemed a part of such school fund for the purposes of this act. Out of the teachers' salary fund shall be paid the salaries of all teachers holding in the fiscal year positions which existed in the preceding fiscal year. No other demands whatsoever shall be paid out of such fund. If, by any increase in the rate of salaries, or for any other cause, such fund should be insufficient to pay all of the salaries which constitute demands against it, such fund shall be divided pro rata among such demands, and the portion of such demands unpaid shall be payable out of any available money in the school fund of which said teachers' salary fund constitutes a part. If teachers' positions other than or in addition to those which existed in the preceding fiscal year are created, the salaries of teachers holding such different or additional positions shall not be paid out of the teachers' salary fund, but out of any other available moneys, but the amount of such salaries shall be included in determining the amount of the teachers' salary fund for the succeeding fiscal year. If there remain in any fiscal year any money in any teachers' salary fund after the payment of all legal demands for such year against such fund, such money so remaining shall be transferred to the general school fund of which said teachers' salary fund is a part, and shall become available for the payment of any unpaid lawful demands against such general fund. It shall be the duty of any officer whose duty it is to audit demands against the school fund of any such county, or city and county, in this state, on or before the first Monday of the fiscal year, to file with the board of supervisors of such county, or city and county, and with the officer whose duty it is to pay demands against the school fund of any such county, or city and county, a certified copy of a statement made by him of the amount of money used in such county, or city and county, for the payment of teachers' salaries for the next preceding fiscal year, and no demands against the school funds of such county, or city and county, shall be allowed, audited, or paid until said copies shall have

been filed as aforesaid. The allowance, audit, or payment of any demand out of a teachers' salary fund in violation of this act may be enjoined by the suit of any teacher whose salary is payable from said fund. The members of the governing body of any such county, or city and county, in this state, who shall pass a demand against said teachers' salary fund in violation of the provisions of this act, and any officer whose duty it is to audit demands against such fund and who shall audit a demand against said teachers' salary fund in violation of the provisions of this act, and any officer whose duty it is to pay demands against such funds, and who shall pay a demand against said teachers' salary fund in violation of this act, shall each be jointly and severally liable therefor to any teacher whose salary is payable from said fund who shall have been damaged by the allowance, audit and payment of such demand. En. Stats. 1899, 79.

§ 1819. Duty of auditor if supervisors fail to make levy. If the supervisors fail to levy the tax as herein provided, then the auditor must, and add it to the assessment roll. En. March 12, 1872.

Cal.Rep.Cit. 124, 697.

§ 1820. Proceeds of tax to be paid into the county school fund. All moneys derived from this tax in each county must be paid into the treasury thereof to the credit of the school fund. En. March 12, 1872. 1905 625

Cal.Rep.Cit. 97, 436; 124, 697.

ARTICLE XIX.

DISTRICT SCHOOL TAX.

§ 1830. Elections to determine.
§ 1831. Notice of election.
§ 1832. Same.
§ 1833. How election to be conducted.
§ 1834. Ballots, what to contain.
§ 1835. Returns.
§ 1836. Trustees must report to board of supervisors.
§ 1837. Supervisors to levy tax.
§ 1838. Tax, how levied. (Repealed.)
§ 1839. Maximum rate of.
§§ 1840 to 1852. (Repealed.)

§ 1830. Elections to determine. The board of school trustees of any district may, prior to the fifteenth day of August in any year, when, in their judgment, it is advisable, call an election, and submit to the electors of the

district the question whether a tax shall be raised to furnish additional school facilities for the district, or to maintain any school in such district, or for building one or more schoolhouses, or for any two or all of these purposes; provided, that where a tax has been collected for the purpose of building a schoolhouse, and the erection of said schoolhouse shall not have been commenced within two years from the time said tax was collected, the custodian of said money shall return the same to the parties from whom said tax was collected. En. March 12, 1872. Am'd. 1880, 43; 1881, 47; 1893, 263.

Cal.Rep.Cit. 52, 72; 52, 621; 93, 418; 97, 436; 112, 315; 124, 697; 138, 256.

Act authorizing issuance of bonds for school purposes: See General Laws, title Schools.

§ 1831. **Notice of election.** Such election must be called by posting notices in three of the most public places in the district, for twenty days; and, also, if there is a newspaper in the county, by advertisment therein once a week for three weeks. En. March 12, 1872.

Cal.Rep.Cit. 52, 72; 52, 621; 124, 697.

§ 1832. **Same.** Such notices must specify the time and place of holding the election, the amount of money proposed to be raised, and the purpose for which it is intended to be used. En. March 12, 1872.

Cal.Rep.Cit. 52, 621; 93, 418; 124, 697.

§ 1833. **How election to be conducted.** The election shall be conducted in conformity to the provisions of sections one thousand five hundred and ninety-six, one thousand five hundred and ninety-seven, one thousand five hundred and ninety-eight, one thousand five hundred and ninety-nine, one thousand six hundred, and one thousand six hundred and one of the Political Code; provided, that no particular form of ballot shall be required; nor shall any informalities in conducting such election invalidate the same, if the election shall have been otherwise fairly conducted. En. March 12, 1872. Am'd. 1880, 44; 1893, 263.

Cal.Rep.Cit. 52, 72; 52, 621; 102, 185; 124, 697.

§ 1834. **Ballots, what to contain.** At such elections the ballots must contain the words "Tax—Yes"; or, "Tax—No." En. March 12, 1872. Am'd. 1880, 44.

Cal.Rep.Cit. 124, 697.

§ 1835. Returns. If a majority of the votes cast upon the question of the tax levy are "Tax—Yes," the officers of the election must certify the fact to the board of school trustees. En. March 12, 1872. Am'd. 1880, 44; 1893, 264.

Cal.Rep.Cit. 112, 315; 124, 697.

§ 1836. Trustees must report to board of supervisors. The board of school trustees, upon receipt of a certificate of such fact, must report the same to the board of supervisors, stating the amount of money to be raised. En. March 12, 1872. Am'd. 1880, 44; 1893, 264.

Cal.Rep.Cit. 124, 697.

§ 1837. Supervisors to levy tax. The board of supervisors must, at the time of levying the county taxes, levy a tax upon all the taxable property in the district voting such tax, sufficient to raise the amount voted. The rate of taxation shall be ascertained by deducting fifteen per cent for anticipated delinquencies from the aggregate assessed value of the property in the district, as it appears on the assessment roll of the county, and then dividing the sum voted by the remainder of such aggregate assessed value. The taxes so levied shall be computed and entered on the assessment roll by the county auditor, and collected at the same time and in the same manner as state and county taxes; and when collected shall be paid into the county treasury for the use of the district in which the tax was voted. En. March 12, 1872. Am'd. 1880, 44.

Cal.Rep.Cit. 68, 499; 93, 418; 93, 419; 96, 636; 97, 436; 112, 315; 124, 697.

§ 1838. Tax, how levied. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 106. Rep. 1880, 48.

Cal.Rep.Cit. 124, 697.

§ 1839. Maximum rate of. The maximum rate of tax levied by a district tax in any one year for building purposes must not exceed seventy cents on each hundred dollars, and the maximum rate levied for other school purposes must not exceed thirty cents on each one hundred dollars in any one year. En. March 12, 1872.

Cal.Rep.Cit. 124, 197; 124, 697.

§ 1840. (Repealed.) En. March 12, 1872. Rep. 1880, 48.

§ 1841. (Repealed.) En. March 12, 1872. Rep. 1880, 48.

§ 1842. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 88; 1873-4, 112. Rep. 1880, 48.

§ 1843. (Repealed.) En. March 12, 1872. Rep. 1880, 48.

§ 1844. (Repealed.) En. March 12, 1872. Rep. 1880, 48.

§ 1845. (Repealed.) En. March 12, 1872. Rep. 1873-4, 84. En. Stats. 1873-4, 107. Rep. 1880, 48.

§ 1846. (Repealed.) En. March 12, 1872. Rep. 1873-4, 84. En. Stats. 1873-4, 107. Rep. 1880, 48.

§ 1847. (Repealed.) En. March 12, 1872. Rep. 1873-4, 84. En. Stats. 1873-4, 107. Rep. 1880, 48.
Cal.Rep.Cit. 53, 254.

§ 1848. (Repealed.) En. March 12, 1872. Rep. 1873-4, 84. En. Stats 1873-4, 108. Rep. 1880, 48.

§ 1849. (Repealed.) En. Stats. 1873-4, 108. Rep. 1880, 48.

§ 1850. (Repealed.) En. Stats. 1873-4, 108. Rep. 1880, 48.

§ 1851. (Repealed.) En. Stats. 1873-4, 109. Rep. 1880, 48.

§ 1852. (Repealed.) En. Stats. 1873-4, 109. Rep. 1880, 48.
Cal.Rep.Cit. 53, 254.

ARTICLE XX

GENERAL PROVISIONS RELATIVE TO SCHOOL FUNDS AND TAXES.

§ 1857. No compensation allowed to certain officers.
§ 1858. Apportionment of school fund.
§ 1859. Same.
§ 1860. Same.
§ 1861. What state school fund may be used for.

§ 1857. No compensation allowed to certain officers. No assessor, tax collector, city, city and county, or county treasurer must charge or receive any fees or compensation whatever for assessing, collecting, receiving, keeping, or disbursing any school moneys, but the whole moneys collected must be paid to the city, city and county, or county treasurer; provided, that said assessor, or tax collector, for services rendered in the collection of poll taxes, shall receive the sum of fifteen per cent of the collections. En. March 12, 1872. Am'd. 1880, 44; 1881, 1; 1893, 264.
Cal.Rep.Cit. 104, 64.

§ 1858. Apportionment of school fund. All state school moneys apportioned by the superintendent of public instruction must be apportioned to the several counties in proportion to the number of school census children, as shown by the returns of the school census marshals of the preceding school year; provided, that Indian children whose parents are on government reservations, or are living in the tribal relation, and Mongolian children not native born, shall not be included in the apportionment list. The superintendent of schools in each county must apportion all state and county school moneys as follows: 1905 57

First—He must ascertain the number of teachers each district is entitled to by calculating one teacher for every seventy school census children, or fraction of such number not less than twenty school census children, as shown by the next preceding school census; and in cities or districts wherein separate classes are established for the instruction of the deaf, as provided in section 1618 of this code, an additional teacher for each nine deaf children, or fraction of such number, not less than five, actually attending such classes; provided, that all children in any asylum, and not attending the public schools, of whom the authorities of said asylum are the guardians, shall not be included in making the estimate of the number of teachers to which the district in which the asylum is located is entitled.

Second—He must ascertain the total number of teachers for the county, by adding together the number of teachers assigned to the several districts.

Third—Five hundred dollars shall be apportioned to each district for every teacher assigned to it; provided, that to districts having ten and less than twenty school census children, shall be apportioned four hundred dollars; provided further, that to districts having over seventy school census children and a fraction of less than twenty, there shall be apportioned twenty dollars for each census child in said fraction.

Fourth—All school money remaining on hand after apportioning to the districts the moneys provided for in subdivision three of this section, must be apportioned to the several districts in proportion to the average daily attendance in each district during the preceding school year. Census children, wherever mentioned in this chap-

ter, shall be construed to mean those between the ages of five and seventeen years.

Fifth—Whenever in any school year, prior to the receipt by the counties, cities, or cities and counties of this state, of their state, county, or city school fund, the school districts or cities shall not have sufficient money to their credit to pay the lawful demands against them, the county, city, or city and county superintendent shall give the treasurer of said county, city, or city and county an estimate of the amount of school money that will next be paid into the county, city, or city and county treasury, stating the amount to be apportioned to each district. Upon the receipt of such estimate, it shall be the duty of the treasurer of said county, city, or city and county to transfer from any fund not immediately needed to pay claims against it, to the proper school fund, an amount not to exceed ninety per cent of the amount estimated by the superintendent, and he shall immediately notify the superintendent of the amount so transferred. The funds so transferred to the school fund shall be retransferred by the treasurer to the fund from which they were taken, from the first money paid into the school fund after the transfer. En. March 12, 1872. Am'd. 1873-4, 83; 1873-4, 114; 1880, 44; 1881, 47; 1887, 143; 1889, 194; 1893, 264; 1903, 125.

Cal.Rep.Cit. 99, 29; 134, 65; 134, 66; 134, 67; 138, 254; 138, 255; 138, 256.

§ 1859. **Same.** No school district, except one newly formed, is entitled to receive any apportionment of state or county school moneys which has not maintained a public school for at least six months during the next preceding school year. A district which is prevented by fire, flood, or prevailing epidemic from maintaining a school for the length of time designated in this section, is nevertheless entitled to its apportionment of state and county school moneys. En. March 12, 1872. Am'd. 1873-4, 110; 1880, 45; 1889, 195.

Cal.Rep.Cit. 99, 29; 138, 254; 138, 255; 138, 256.

§ 1860. **Same.** No school district is entitled to receive any apportionment of state or county school moneys unless the teachers employed in the schools of such district hold legal certificates of fitness for teaching, in full force and effect. En. March 12, 1872.

§ 1861. What state school fund may be used for. The state school fund must be used for no other purpose than the payment of salaries of teachers of primary and grammar schools. En. March 12, 1872. Am'd. 1880, 45; 1893, 265.

Primary and grammar schools—school revenues to be applied exclusively to the support of: Const. Cal., art. IX, sec. 6.

ARTICLE XXI.

MISCELLANEOUS PROVISIONS RELATING TO PUBLIC SCHOOLS.

§ 1867. Insulting teachers.
§ 1868. Disturbing schools.
§ 1869. Issuing irregular certificates.
§ 1870. Officers acting as agents.
§ 1871. Certificates issued only to persons of good moral character.
§ 1872. Appeals from orders revoking certificates. (Repealed.)
§ 1873. School officers may administer oaths.
§ 1874. Rules governing adoption of text-books.
§ 1875. Penalties for neglect to use books adopted.
§ 1876. Certain persons not to be interested in contracts.
§ 1877. Printing and binding, by whom to be done.
§ 1878. School year, commencement and end.
§ 1879. Bribing members.
§ 1880. Election for issuance of school bonds.
§ 1881. Notice of election, how given.
§ 1882. What notice shall contain.
§ 1883. How election conducted.
§ 1884. Issuance of bonds, when directed.
§ 1885. Form of bonds, when payable.
§ 1886. Interest—Sale of bonds.
§ 1887. Tax for interest and redemption of bonds.
§ 1888. Failure to levy tax, how remedied.
§ 1889. Canceling unsold bonds.
§ 1890. Fire escapes.
§ 1891. School district in different counties—Concurrent action of supervisors.

§ 1867. Insulting teachers. Any parent, guardian, or other person, who shall insult or abuse any teacher, in the presence of the school, shall be guilty of a misdemeanor, and be liable to a fine of not less than ten, nor exceeding one hundred dollars. En. Stats. 1873-4, 111.

Corresponding provision: Pen. Code, sec. 654.

§ 1868. Disturbing schools. Any person who shall willfully disturb any public school, or any public school meeting, shall be guilty of a misdemeanor and be liable to a fine of not less than ten, nor more than one hundred dollars. En. Stats. 1873-4, 111.

§ 1869. Issuing irregular certificates. Any state, county, or city and county superintendent, or any state, county, or city and county board of education, who shall issue a certificate or diploma, except as provided for in this title, shall be guilty of a misdemeanor. En. Stats. 1873-4, 111. Am'd. 1880, 45; 1889, 195.

§ 1870. Officers acting as agents. No officer named in this title, or teacher in any public school held under the provisions of this title, must act as agent for any author, publisher, bookseller or other person, to introduce any book, apparatus, furniture, or any other article whatever, in the common schools of this state, or any one or more of them, or directly or indirectly contract for, or receive any gift or reward for so introducing or recommending the same; and any officer so acting or receiving, must be deemed guilty of a misdemeanor, and, on conviction, be punished by fine or imprisonment, and be removed from office. En. Stats. 1873-4, 85.

§ 1871. Certificates issued only to persons of good moral character. Certificates shall be issued to such persons only as shall have given evidence of good moral character. En. March 12, 1872. Am'd. 1873-4, 111; 1880, 46.

§ 1872. Appeals from orders revoking certificates. (Repealed.) En. March 12, 1872. Rep. 1880, 48.

Cal.Rep.Cit. 81, 23.

§ 1873. School officers may administer oaths. Every officer, including secretaries and assistant secretaries of boards of education, charged with the performance of duties under the provisions of this chapter, may administer and certify oaths relating to officers or official matters concerning public schools. En. March 12, 1872. Am'd. 1889, 196.

§ 1874. Rules governing adoption of text-books. 1. In compiling or causing to be compiled and adopted a uniform series of school text-books for use in the common schools of this state, as required by section seven (7) of article nine (9) of the state constitution, the state board of education shall, within thirty days after the passage of this act, meet and appoint three members of

said board, to wit, the governor, the superintendent of public instruction and one other member of said state board of education as a standing committee on school text-books. The said committee shall be designated and known as the state text-book committee, and shall immediately organize and enter upon the discharge of its duties, and shall have power, subject to the approval of the state board of education, to revise in whole or in part and to manufacture such text-books as are now in use; to compile or cause to be compiled under its direction, and to manufacture such other or additional text-book or books as it may deem necessary or proper for use in the primary and grammar schools (the common schools) of the state; to purchase or hire plates, maps, and engravings of copyright matter; to contract for, or lease copyrights, for the purpose of being used in compiling, printing and publishing such books; to provide for the payment of royalties or for the leasing of plates for the making of the whole or any part of a book or books, and to do any and all acts that may be necessary for the purpose of procuring a meritorious uniform series of text-books for use in all the primary and grammar schools of the state of California. Said committee shall have power, subject to the approval of the state board of education, to prescribe and enforce the use of a uniform series of text-books, and to adopt a list of books for supplementary use from which county and city and county boards of education shall select and adopt books for supplementary use in primary and grammar schools in their respective counties and cities and counties, as required by section seventeen hundred and twelve of the Political Code. As soon as any text-book shall have been compiled, printed, adopted, and is ready for distribution, it shall be the duty of every county and city and county superintendent of schools in the state to order a sufficient number thereof to give at least one copy of every such book to every public school district library in the county or city and county in which he is superintendent, and payment therefor shall be made by him by drawing his requisition without the order of the board of school trustees against the library funds of the respective districts in his county or city and county for the cost and remitting the same to the official who has charge of the

sale of state school text-books. In cities where the city school superintendent or city board of education is accustomed to draw requisitions upon the library funds, it is hereby made the duty of such superintendents or boards of education to order and pay for copies of books of the state series for their school libraries as hereby provided in lieu of the county superintendents.

2. Instruction shall be given in the following subjects in the primary and grammar schools of the state in the several grades in which they may be required, viz.: Reading, writing, orthography, language lessons, and English grammar, arithmetic, geography, history of the United States, elements of physiology and hygiene, vocal music, elementary bookkeeping, drawing, nature study, and civil government; and it shall be the duty of the said text-book committee to revise such of the books of the present state series or publish such new ones in any of the above-mentioned subjects as may be necessary for the proper study and teaching of them, and for the purposes of compilation and publication may make use of any copyright matter deemed suitable, and may purchase or hire plates, maps, or engravings of such copyright matter, may contract and arrange for the payment of royalties, and shall designate such book or books, when published, as belonging to and forming a part of the state series of school text-books, subject to the approval of the state board of education.

3. The said text-book committee shall elect a secretary, who shall be a person of recognized educational ability and experience, who shall be provided with an office at the state capitol in Sacramento in connection with that of the superintendent of public instruction, and who shall keep the books, accounts, and all records of the said committee and perform such other duties as may from time to time be required of said secretary by said committee. Said secretary shall hold office at the pleasure of the committee and shall receive a salary of one hundred and sixty-five dollars per month, payable monthly in the same manner and from the same fund as the salaries of state officers are paid.

4. The said text-book committee may secure copyrights, in the name of the people of the state of California, to any book that may be compiled under this act, and whenever

any one or more of the state school text-books shall have been compiled, published, and adopted, the superintendent of public instruction shall issue an order to all county and city and county boards of education by sending notice by registered mail to the secretaries of all such boards requiring the uniform use of said book or books in all the primary and grammar schools of this state, and when said order shall have thus been given and published, the same shall remain in force and effect for a term of not less than four nor more than eight years; provided, that said order for the uniform use of said book or books shall not take effect until the expiration of at least one year from the time of the completion, purchase, or the leasing of the electrotype plates of said book or books; but nothing in this act shall be construed to prevent any county, city, or city and county from adopting any one or more of the state series of school text-books whenever said book or books shall have been published and is ready for distribution; provided, further, that whenever any plates, maps, or engravings of any publisher or author are adopted for use as hereinbefore provided, the state text-book committee shall enter into a contract for not less than four nor more than eight years for the use of the same, and shall require a good and sufficient bond of the owner of such plates, maps or engravings, guaranteeing that the same shall be kept revised and up to date as may be required by the state board of education.

5. Any county, city and county, city or school district that refuses or neglects to use the state series of school text-books in the grades and in the subjects for which they are intended and at the time as required in the foregoing subdivisions of this act must, upon satisfactory proof of such refusal or neglect, have the state money to which it is otherwise entitled, withheld from it by the superintendent of public instruction.

6. The superintendent of state printing shall have the supervision of all mechanical work connected with the printing and publishing of such books as may be compiled and adopted by said text-book committee and approved by the state board of education, and all such printing and binding shall be done in the state printing office. The superintendent of state printing shall annually on the first day of July, and oftener, if requested,

submit to the said text-book committee a detailed statement showing the number and name of books of the state series published by him during each year.

7. Whenever any book authorized to be published under this act is ready for sale or delivery to pupils, the state printer shall submit to the said state text-book committee, and it in turn to the state board of education, an itemized statement, showing the exact cost of the material, printing, binding, and finishing of such book in editions of five thousand or more, and the state board of education shall thereupon determine and fix the price of such book as required by law, by adding to the cost of manufacturing, the price contracted to be paid as royalty, or for the use of the plates, maps or engravings of the copyright matter therein contained, and said price shall be deemed to be the whole cost of publication of such book at Sacramento. The amount fixed for royalty or cost of plates of copyright matter shall, as the books are sold, be kept separate from other proceeds from the sale of state school text-books, and deposited in the state treasury to the credit of a fund to be designated and known as the "Text-Book Royalty Fund," the same to be paid out quarterly or semi-annually, as may be agreed between the owners of copyright matter and said text-book committee, on the order of the said state text-book committee, in payment of royalties or hire of plates, maps or engravings of copyright matter in the same manner as other claims upon the state treasurer are paid.

8. The sum of twenty thousand dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated, for the purpose of carrying out the provisions of this act. Said appropriation, which shall be known as the "Text-Book Appropriation," shall be subject to the drafts of the said text-book committee for all the expenses incurred by it, except the salary of the secretary, which is otherwise provided for in this act; provided, that all claims shall be presented to the state board of examiners for their approval; said appropriation shall be subject to the drafts of the said committee for all moneys needed for the payment of royalties, for the purchase or hire of such plates, maps, or engravings that may be necessary but which can not be arranged to be paid for as provided in subdivision seventh hereof,

for expert opinions as provided for in subdivision nine of this act, for printing, stationery, postage, and expressage that will be required by said committee, and for manufacturing any edition of any book of the state series now in use or which may hereafter be adopted for use in the primary and grammar schools. It is provided that all moneys that have been received or that may hereafter be received from the sales of state series of school text-books, except that which is received in payment of royalties and provided in this act to be deposited to the credit of the text-book royalty fund, shall be kept by the state treasurer as a separate and distinct fund, to be known as the "State School-Book Fund," which fund shall be subject to the drafts of the said text-book committee for all expenses incurred by the superintendent of state printing for all material, labor, and other expenses necessary in the mechanical work of printing and publishing state school text-books; all claims to be drawn after being certified to by the superintendent of state printing, as provided in subdivision four of section five hundred and twenty-six of the Political Code; provided, that all demands on the state school-book fund shall be presented to the state board of examiners in itemized form for their approval; and upon the approval of the state board of examiners, the state controller is hereby authorized and directed to draw his warrant, and the state treasurer is hereby authorized and directed to pay the same, in conformity with the provision of this section.

9. Before selecting any text-book matter to be used in the compilation or revision of a state school text-book, the said committee may, subject to the approval of the state board of education, secure one or more educational experts to examine and give their opinions on the merits of any book or books or parts of a book that may be taken under consideration, and the claims for payment of such expert service shall be paid in like manner as other claims are paid out of the state text-book appropriation; provided, that the expense of such expert examination and opinion shall not exceed the sum of two hundred dollars ($200.00) for any one book that may be adopted and published as a book of the state series.

10. The existing law which provides the manner and the means for the distribution of state text-books is

hereby continued in force and effect. En. March 12, 1872. Am'd. 1873-4, 112; 1880, 46; 1893, 265; 1903, 192.

Cal.Rep.Cit. 49, 685; 131, 168. Subd. 1—131, 167. Subd. 3—131, 167.

Subd. 1. Four years' continuance in use of text-books adopted, required by Const. Cal., art. IX, sec. 7.

Act to prevent change in text-books in use in the public schools: Stats. 1876, p. 1, was repealed by Stats. 1880, p. 42.

See statutes for state publication of text-books, in General Laws, under title Schools.

§ 1875. Penalties for neglect to use books adopted. If any city or district refuse or neglect to use the books that may be prescribed, or use any other text-books in any of the prescribed studies, the superintendent of public instruction must withhold from such city, town, or district, twenty-five per cent of all state school moneys to which it may be entitled, until it comply; and any moneys so withheld must be apportioned by the superintendent at the next annual apportionment in the same manner as other school moneys in the treasury. En. March 12, 1872.

§ 1876. Certain persons not to be interested in contracts. No school trustee, or member of any board of education, must be interested in any contract made by the board of which he is a member; and any contract made in violation of this provision is void. En. March 12, 1872.

§ 1877. Printing and binding, by whom to be done. All printing or binding required under this chapter, except as provided in subdivision eight of section one thousand seven hundred and seventy-one, must be executed by the state printer, in the form and manner and at the prices of other state printing, and be paid for in like manner. En. March 12, 1872. Am'd. 1893, 266.

§ 1878. School year, commencement and end. The school year begins on the first day of July, and ends on the last day of June. En. March 12, 1872.

Cal.Rep.Cit. 138, 254.

§ 1879. Bribing members. The offering of any valuable thing to any member of a board of education, or board of school trustees, with the intent thereby to influence his

action in regard to the granting of any teacher's certificate, the appointment of any teacher, superintendent, or other officer or employee, the adoption of any textbook, or the making of any contract to which the board of education of which he is a member shall be a party, or the acceptance by any member of a board of education or board of school trustees of any valuable thing, with corrupt intent, shall be a misdemeanor, punishable as by law provided. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with any offense described in this section. Any contract or appointment obtained from a board of education or board of school trustees by corrupt means shall be void. En. Stats. 1880, 47. Am'd. 1889, 196; 1893, 266.

Cal.Rep.Cit. 137, 14; 137, 16.

§ 1880. Election for issuance of school bonds. The board of trustees, board of education, or other governing bodies of any school district may, when in their judgment it is advisable, and must, upon a petition of a majority of the heads of families residing in the district, call an election and submit to the electors of the district, whether the bonds of such district shall be issued and sold for the purpose of raising money for purchasing school lots, for building, or purchasing one or more schoolhouses, for insuring the same, for supplying the same with furniture and necessary apparatus, for improving the grounds, or for any or all of said purposes, for liquidating any indebtedness already incurred for said purposes, and for refunding any outstanding valid indebtedness, evidenced by bonds, or warrants thereof. En. Stats. 1881, 62. Am'd. 1885, 8; 1889, 196; 1893, 267; 1895, 245; 1899, 94.

Cal.Rep.Cit. 99, 151; 102, 185; 138, 256.

§ 1881. Notice of election, how given. Such election must be called by posting notices, signed by the board, in three of the most public places in the district, for not less than twenty days before the election; and if there is a newspaper published in the county, by publishing such notice therein not less than once a week for three successive weeks. En. Stats. 1881, 62.

§ 1882. What notice shall contain. Such notice must contain:

1. Time and place of holding such election;

2. The names of inspectors and judges to conduct the same;

3. The hours during the day in which the polls will be open;

4. The amount and denomination of the bonds; the rate of interest and the number of years, not exceeding forty, the whole or any part of said bonds are to run. En. Stats. 1881, 62. Am'd. 1893, 267; 1901, 293; 1903, 41.

1905 — § 1883. **How election conducted.** Such election shall be conducted in conformity to the provisions of sections one thousand five hundred and ninety-six, one thousand five hundred and ninety-seven, one thousand five hundred and ninety-eight, one thousand five hundred and ninety-nine, one thousand six hundred, one thousand six hundred and one, and one thousand eight hundred and thirty-four, except that the words to appear upon the ballots shall be "Bonds—Yes" or "Bonds—No." En. Stats. 1881, 63. Am'd. 1893, 267.

§ 1884. **Issuance of bonds, when directed.** On the seventh day after said election, at one o'clock P. M., the returns having been made to the board of trustees, board of education, or other governing body of such school district, the board must meet and canvass said returns, and if it appears that two thirds of the votes cast at said election was in favor of issuing such bonds, then the board shall cause an entry of that fact to be made upon its minutes, and shall certify to the board of supervisors of the county all the proceedings had in the premises, and thereupon said board of supervisors shall be and they are hereby authorized and directed to issue the bonds of such district, to the number and amount provided in such proceedings, payable out of the building fund of such district, naming the same, and that the money shall be raised by taxation upon the taxable property in said district, for the redemption of said bonds and the payment of the interest thereon; provided, that the total amount of bonds so issued shall not exceed five per cent of the taxable property of the district, as shown by the last equalized assessment-book of the county. En. Stats. 1881, 63. Am'd. 1895, 246.

§ 1885. Form of bonds, when payable. The board of supervisors by an order entered upon its minutes shall prescribe the form of said bonds and of the interest coupons attached thereto, and must fix the time when the whole or any part of the principal of said bonds shall be payable, which shall not be more than forty years from the date thereof. En. Stats. 1881, 63. Am'd. 1897, 243; 1903, 40.

§ 1886. Interest—Sale of bonds. Said bonds must not bear a greater amount of interest than eight per cent, said interest to be payable annually or semi-annually; and said bonds must be sold in the manner prescribed by the board of supervisors, but for not less than par, and the proceeds of the sale thereof must be deposited in the county treasury to the credit of the building fund of said school district, and be drawn out for the purposes aforesaid as other school moneys are drawn out. All the proceedings of every school district and of every board of trustees, board of education, board of supervisors, and of all officers of school districts and counties purporting to have been taken under or by authority of sections one thousand eight hundred and eighty to one thousand eight hundred and eighty-eight, inclusive, of the Political Code, shall be valid in the same manner and to the same extent as if sections one thousand eight hundred and eighty and one thousand eight hundred and eighty-four of said code, at the time when such proceedings were taken, in express language empowered the governing body of all school districts, by whatever name such governing body should be known, to call elections for the purposes set forth in said section one thousand eight hundred and eighty, and to receive and canvass returns, to cause a minute entry of the result of elections, and to certify proceedings to the board of supervisors, as provided by said section one thousand eight hundred and eighty-four. And all bonds of school districts purporting to have been issued under or by virtue of any or all of the following sections, to wit: sections one thousand eight hundred and eighty, one thousand eight hundred and eighty-one, one thousand eight hundred and eighty-two, one thousand eight hundred and eighty-three, one thousand eight hundred and eighty-four, one thousand eight hundred and eighty-five, one thousand eight hun-

dred and eighty-six, one thousand eight hundred and eighty-seven, and one thousand eight hundred and eighty-eight, of the Political Code, shall be valid in the same manner and to the same extent as if said sections used the words "board of education, board of trustees, or other governing body," in place of the words "board of trustees," whenever the words "board of trustees" occur in said sections. En. Stats. 1881, 63. Am'd. 1895, 246.

§ 1887. Tax for interest and redemption of bonds. The board of supervisors, at the time of making the levy of taxes for county purposes, must levy a tax for that year upon the taxable property in such district, for the interest and redemption of said bonds, and such tax must not be less than sufficient to pay the interest of said bonds for that year, and such portion of the principal as is to become due during such year, and in any event must be high enough to raise, annually, for the first half of the term said bonds have to run, a sufficient sum to pay the interest thereon; and during the balance of the term, high enough to pay such annual interest, and to pay, annually, a proportion of the principal of said bonds equal to a sum produced by taking the whole amount of said bonds outstanding and dividing it by the number of years said bonds then have to run; and all moneys so levied, when collected, shall be paid into the county treasury to the credit of the building fund of such district, and be used for the payment of principal and interest on said bonds, and for no other purpose. The principal and interest on said bonds shall be paid by the county treasurer, upon the warrant of the auditor, out of the fund provided therefor; and it shall be the duty of the auditor to cancel and file with the treasurer the bonds and coupons as rapidly as they are paid. En. Stats. 1881, 64.

Cal.Rep.Cit. 99, 151; 108, 284.

§ 1888. Failure to levy tax, how remedied. If the board of supervisors of any county which has issued bonds under the provisions of this act, shall fail to make the levy necessary to pay such bonds or interest coupons at maturity, and the same shall have been presented to the county treasurer, and the payment thereof refused, the owner may file the bond, together with all unpaid coupons,

with the state controller, taking his receipt therefor, and the same shall be registered in the state controller's office; and the state board of equalization shall, at their next session, and at each annual equalization thereafter, add to the state tax to be levied in said district, a sufficient rate to realize the amount of principal or interest past due prior to the next levy, and the same shall be levied and collected as a part of the state tax, and paid into the state treasury, and passed to the special credit of such district bond tax, and shall be paid by warrants, as the payments mature, to the holder of such registered obligations as shown by the register in the office of the state controller, until the same shall be fully satisfied and discharged; any balance then remaining being passed to the general account and credit of said district. En. Stats. 1881, 64.

§ 1889. Canceling unsold bonds. Whenever any bonds issued under the provisions of this title shall remain unsold for the period of six months after having been offered for sale in the manner prescribed by the board of supervisors, the board of trustees, or board of education of the school district for or on account of which such bonds were issued, or of any school district composed wholly or partly of territory which, at the time of holding the election mentioned in section eighteen hundred and eighty-three, was embraced within the district for or on account of which such bonds were issued, may petition the board of supervisors to cause such unsold bonds to be withdrawn from market and canceled. Upon receiving such petition, signed by a majority of the members of said board of trustees or board of education, the supervisors shall fix a time for hearing the same, which shall not be more than thirty days thereafter, and shall cause a notice, stating the time and place of hearing, and the object of the petition in general terms, to be published for ten days prior to the day of hearing, in some newspaper published in said school district, if there is one, and if there is no newspaper published in said school district, then in a newspaper published at the county seat of the county in which such school or some part thereof is situated. At the time and place designated in the notice for hearing said petition, or at any subsequent time to which said hearing may be postponed, the

supervisors shall hear any reasons that may be submitted for or against the granting of the petition, and if they shall deem it for the best interests of the school district named in the petition that such unsold bonds be canceled, they shall make and enter an order in the minutes of their proceedings that said unsold bonds be canceled, and thereupon said bonds, and the vote by which they were authorized to be issued, shall cease to be of any validity whatever. En. Stats. 1889, 197.

§ 1890. Fire escapes. Each school building in the state shall, if two or more stories in height, be provided with suitable and sufficient fire escapes. The trustees of each school district and the board of education of each municipal corporation must provide sufficient and suitable fire escapes for each school building two or more stories in height under their jurisdiction. En. Stats. 1899, 47.

§ 1891. School district in different counties.—Concurrent action of supervisors. When any school district is situated partly in different counties, all returns, reports, certificates and petitions required to be made to the board of supervisors by the terms of sections one thousand eight hundred and thirty-six, one thousand eight hundred and eighty-four, and one thousand eight hundred and eighty-nine of the Political Code, and all action required to be taken by the board of supervisors, by the terms of sections one thousand eight hundred and eighty-four, one thousand eight hundred and eighty-five, and one thousand eight hundred and eighty-nine, shall be by concurrent action of the respective boards of supervisors of every county in which any portion of said district may be situated. And the assessor of any such county or counties, other than the county in which the schoolhouse in said district is or is to be located, shall, prior to the time when the board of supervisors meets to make the levy for county purposes in each year, during the term any bonds issued under the provisions of sections one thousand eight hundred and eighty-four, and one thousand eight hundred and eighty-five of the Political Code are to run, or in any year when a district school tax shall have been authorized under the provisions of sections one thousand eight hundred and thirty, one thousand eight hundred and thirty-one, one thousand eight hundred and thirty-two,

one thousand eight hundred and thirty-three, one thousand eight hundred and thirty-four, one thousand eight hundred and thirty-five, one thousand eight hundred and thirty-six, one thousand eight hundred and thirty-seven, and one thousand eight hundred and thirty-nine of the Political Code in any district of his county, certify to the board of supervisors of the county in which the schoolhouse in any such district is or is to be located, a statement of the total value of all the taxable property of said district, situated in his county, as appears from the last assessment roll of said county; and the board of supervisors of the county in which the schoolhouse in said district is or is to be located shall determine the rate of taxation necessary to be levied upon the property of said district, and for that purpose is vested with all the authority and is subject to the same rules and limitations as boards of supervisors in cases where the district is not joint. After such board of supervisors shall have made such determination, the clerk of said board of supervisors shall certify such rate under the seal of said board to the auditor of each county in which any portion of said district is situated, and said auditors shall thereupon compute the tax and enter the same upon the assessment roll of the said respective counties. And when any money shall have been collected for taxes under the provisions of the Political Code, providing for the collection of taxes levied for a school district tax, or to pay the principal and interest upon bonds of any school district situated in more than one county, and such money shall have been placed in the treasury of any county other than the one in which the schoolhouse in said district is or is to be located, the treasurer of such county must, when requested so to do by the board of trustees of said district, forward all money in such treasury to the county treasurer of the county in which the schoolhouse in said district is or is to be located, who shall receive and receipt for the same, and place such money in the treasury of such county to the credit of the proper fund of said school district. En. Stats. 1901, 683.

Part 3

TITLE IV.

STATE MILITIA.

Chapter I. Enrolled Militia, §§ 1895-1902.
II. The National Guard, §§ 1912-2032.
III. Calling and Drafting Militia into Actual Service, §§ 2039-2066.
IV. Courts Martial and of Inquiry, §§ 2076-2087.
V. The Board of Military Auditors, §§ 2093-2105.
VI. Adjutant General, §§ 2107-2117.

CHAPTER I.

ENROLLED MILITIA.

§ 1895. Who are subject to military duty.
§ 1896. Who are exempt from military duty.
§ 1897. Assessor to enroll persons subject to military duty. Tax collector in San Francisco.
§ 1898. Penalty for dereliction as to enrollment.
§ 1899. Board of equalization to correct the roll.
§ 1900. Clerk of supervisors to deliver copy to brigadier-general.
§ 1901. Compensation of assessors.
§ 1902. Muster roll to be made by brigadier-general.

§ 1895. Who are subject to military duty. Every able-bodied male citizen of this state, except Mongolians and Indians, between the ages of eighteen and forty-five years, not exempt by law, is subject to military duty. But no alien is obliged to serve or bear arms against the state to which his allegiance is due. En. March 12, 1872. Am'd. 1897, 406.

Constitution, article VIII, devoted to.

Military subordinate to civil power: See Const. Cal., art. I, sec. 12.

§ 1896. Who are exempt from military duty. The following persons are exempt from military duty and enrollment:

1. Ministers of religion.
2. Civil and military officers of the United States.
3. Officers of foreign governments.
4. Civil officers of the state of California.
5. All persons exempted from military duty by the laws of the United States. En. March 12, 1872.

Electors exempted from duty on day of election: See Const. Cal., art. II, sec. 3.

§ 1897. Assessor to enroll persons subject to military duty. Tax collector in San Francisco. The county assessor of each county in this state must, at the same time in each year when he prepares a roll containing the taxable inhabitants of his district or county, enroll all the inhabitants thereof subject to military duty, two copies of which roll must be sworn to by him, and delivered to the clerk of the board of supervisors at the same time he delivers the assessment roll. In the city and county of San Francisco the tax collector must perform the duties by this section imposed upon assessors. En. March 12, 1872. Am'd. 1897, 406.

§ 1898. Penalty for dereliction as to enrollment. If any assessor, or the tax collector of the city and county of San Francisco, neglects or refuses to perform any of the duties required of him by this chapter, he is subject to the same liabilities as are provided by law for a neglect or refusal to perform any of the duties required of him in the assessment of taxes, and, in addition, forfeits not less than three hundred, nor more than one thousand, dollars, to be sued for in the name of the people of the state, by the district attorney of the respective counties, and when recovered to be paid into the military fund of the state. If the clerk of the board of equalization neglects or refuses to deliver to the brigadier-general of the brigade to which his county belongs a copy of the military assessment roll, as directed in this chapter, he forfeits not less than three hundred, nor more than five hundred, dollars, to be sued for, recovered, and disposed of in the same manner. En. March 12, 1872. Am'd. 1897, 406.

§ 1899. Board of equalization to correct the roll. The board of equalization must correct the roll at the same time and in the same manner as is prescribed by law for the correction of the assessment roll. En. March 12, 1872.

§ 1900. Clerk of supervisors to deliver copy to brigadier-general. The clerk of the board of supervisors must deliver to the brigadier-general of the brigade to which his county belongs a copy of such roll, certified by him, within ten days after the board of equalization have com-

pleted their corrections. En. March 12, 1872. Am'd. 1897, 406.

§ 1901. Compensation of assessors. The compensation of assessors for making out the military roll must be determined by the boards of supervisors of the several counties, at the rate of five dollars for each one hundred names of persons returned by the assessors as subject to military duty. En. March 12, 1872.

§ 1902. Muster roll to be made by brigadier-general. Each brigadier-general must, on the first Monday in October of each year, make from the rolls received by him a muster roll, showing the number of persons within the limits of his command subject to military duty, the original of which, signed by him, must be filed in his office, and a copy thereof transmitted at once to the adjutant-general. En. March 12, 1872.

CHAPTER II.

THE NATIONAL GUARD.

Article I. General Provisions Relating to National Guard, §§ 1912-1946.
II. Companies, §§ 1951-1977.
III. Regiments and Battalions, §§ 1980-1998.
IV. Divisions and Brigades, §§ 2003-2009.
V. Parades and Drills, §§ 2018-2032.

ARTICLE I.

GENERAL PROVISIONS RELATING TO THE NATIONAL GUARD.

§ 1912. National Guard, of what it consists.
§ 1913. Board of location and organization.
§ 1914. National Guard to be organized into regiments.
§ 1915. What officers belong to.
§ 1916. Governor commander-in-chief.
§ 1917. Staff of commander-in-chief.
§ 1918. Appointment and term of office of generals.
§ 1919. Staff officers to be citizens of state.
§ 1920. Effect of line officers accepting commission on staff.
§ 1921. Oath of officers and members.
§ 1922. System of instruction.
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§ 1926. Resignations, how made.
§ 1927. Vacancies in elective offices, how filled.
§ 1928. Absence or removal, when deemed resignation.
§ 1929. Discharges, when and by whom granted.
§ 1930. Disobedience of orders, unsoldierlike conduct; penalty.

§ 1931. Interrupting officer or private in discharge of his duty; penalty.
§ 1932. Dishonorable discharge bar to re-entry.
§ 1933. Protection of parade ground.
§ 1934. By-laws.
§ 1935. Fines.
§ 1936. Exemptions.
§ 1937. List of persons so exempt to be given to assessor.
§ 1938. Commander-in-chief may disband any portion of National Guard.
§ 1939. Rules and regulations of United States army; how far applicable generally.
§ 1940. No fees allowed to officers for administering oaths.
§ 1941. Powers of commander-in-chief.
§ 1942. Colors. Right to parade.
§ 1943. Pension.
§ 1944. Forfeiture of claims.
§ 1945. Service medals.
§ 1946. Decorations which may be worn.

§ 1912. National Guard, of what it consists. The organized uniformed militia of the state of California shall be known as the National Guard of California and the naval militia of California. This force shall not exceed sixty-five companies, of which fifty-six companies shall be cavalry, artillery, infantry, or signal corps, as the board of location and organization may direct, and five divisions of the naval militia, and the other four companies shall be distributed to such arms of the service as the board of location and organization may direct. The National Guard and naval militia must be located throughout the state with reference to the military wants thereof, means of concentration, and other military requirements. The word "division," as used in this section in connection with the naval militia, shall have the same meaning and effect as "company" when used in connection with the infantry, and the naval militia shall receive its proportion of any appropriation made for the support of the National Guard. En. March 12, 1872. Am'd. 1875-6, 30; 1877-8, 31; 1887, 83; 1889, 429; 1893, 104; 1895, 181; 1897, 407; 1901, 580.

Act to establish naval battalion: See post, Appendix, title Naval Battalion.

Act providing for independent and unattached companies of National Guard: See post, Appendix, title National Guard.

§ 1913. Board of location and organization. The commander-in-chief, major-general, and adjutant-general constitute a board of location and organization of the National

Guard, with power to transfer, attach, consolidate, or disband companies, and to reorganize at pleasure regiments and battalions. En. March 12, 1872. Am'd. 1877-8, 42; 1897, 407.

§ 1914. **National Guard to be organized into regiments.** All companies of the National Guard must, as far as practicable, be organized into regiments, battalions, and batteries. En. March 12, 1872.

§ 1915. **What officers belong to.** All commissioned officers of the staff of the commander-in-chief, the adjutant-general, and the officers of his staff, the major-general and brigadier-generals, and all officers of their respective staffs, belong to the National Guard, and are at all times subject to be called into active service by the commander-in-chief; and when called into active service, each officer must be called and mustered according to his commission. En. March 12, 1872.

§ 1916. **Governor commander-in-chief.** The governor is commander-in-chief of the National Guard. En. March 12, 1872.

Governor is commander-in-chief: Const. Cal., art. V, sec. 5.

§ 1917. **Staff of commander-in-chief.** His staff consists of one adjutant-general, with the rank of brigadier-general; one assistant adjutant-general, one chief engineer, one paymaster-general, one judge-advocate-general, one inspector-general of rifle practice, one surgeon-general, each with the rank of colonel; sixteen aides-de-camp, with rank of lieutenant-colonel; one aide-de-camp, with the rank of commander; and two staff orderlies, with the rank of sergeant-major, appointed by and holding office at the pleasure of the commander-in-chief, or until their successors are appointed and qualified. En. March 12, 1872. Am'd. 1877-8, 31; 1880, 55; 1885, 103; 1891, 122; 1901, 581.

§ 1918. **Appointment and term of office of generals.** The commander-in-chief, by and with the advice and consent of the senate, must appoint one major-general, and for each brigade of the National Guard of California one brigadier-general, who must be citizens of the United States and of the state; have served at least four years as

officers either in the National Guard of California or in the United States military service, or in both, two years of which service shall have been as a field officer; and the brigadier-generals must be residents of localities within the brigades for which they are appointed. They take rank according to the date assigned them in their commissions, which shall be from the time of their appointment, and hold their office until their successors are appointed and qualified. En. March 12, 1872. Am'd. 1877-8, 31; 1897, 407; 1901, 581.

§ 1919. Staff officers to be citizens of state. All staff officers shall be citizens of the state of California. En. March 12, 1872. Am'd. 1895, 181; 1897, 407.

§ 1920. Effect of line officers accepting commission on staff. Any officer of a regiment, battalion, or company accepting any staff appointment, is held to have resigned the commission held by him at the time of said appointment. En. March 12, 1872. Am'd. 1901, 581.

§ 1921. Oath of officers and members. All officers and soldiers of the National Guard, on becoming members, and before performing duty, and at each subsequent re-enlistment must take and subscribe the following oath, which all commissioned officers thereof are authorized to administer: "I do solemnly swear that I will support the constitution of the United States and the constitution of the state of California, and will maintain and defend the laws and all officers employed in administering the same." Which oath, certified by the officer administering the same, must be returned to the adjutant-general, and be preserved with the rolls of companies. Oaths of re-enlistment shall show on the margin the number of re-enlistment. En. March 12, 1872. Am'd. 1877-8, 41.

§ 1922. System of instruction. The systems of instruction prescribed for the different arms of the United States army must be followed in the military drills and instruction by the National Guard, and by the enrolled militia when called into active service. En. March 12, 1872. Am'd. 1877-8, 32.

§ 1923. Uniform and equipments. All moneys hereafter appropriated for the purchase of service uniforms or equip-

ments shall be devoted entirely to the purchase of uniforms and necessary equipments, which shall be the same as worn by similar corps in the United States army, and nothing further shall be expended upon dress uniforms or equipments. Any regiment, unattached battalion, or unattached company may, however, adopt, subject to the approval of the commander-in-chief, a distinctive dress uniform and equipments, which may be worn on all occasions, unless otherwise ordered; but the expense of providing and maintaining such uniforms and equipments shall be borne entirely by the organization so adopting. There shall be a board of three officers, to be detailed by the commander-in-chief, which board shall meet from time to time, but at least once in each year, for the purpose of considering and recommending to the commander-in-chief what in its judgment is most urgently required for the uniforming and equipping of the guard from time to time. En. March 12, 1872. Rep. 1887, 87. En. Stats. 1893, 108. Am'd. 1895, 182.

§ 1924. **Ranks of commissioned officers.** All commissioned officers of regiments, battalions, troops, batteries, and companies of the National Guard must take rank according to the date assigned them by their commissions, which date shall be from the time of their election or appointment; and when two of the same grade are of the same date their rank must be determined by length of previous military service in the state; and if of equal service then by lot. Officers of regiments, battalions, troops, batteries, and companies of the National Guard, in all cases, are of superior rank to officers of the enrolled militia of the same grade, irrespective of the date of their commissions. En. March 12, 1872. Am'd. 1897, 407.

§ 1925. **Officers re-elected not to be recommissioned.** When an officer is re-elected no new commission issues, but a certificate of such election must be issued to him by the adjutant-general. In the event of a commission being lost or destroyed, on satisfactory proof being given of the same, the commander-in-chief shall issue a new commission, with rank from date of former commission. En. March 12, 1872. Am'd. 1877-8, 32.

§ 1926. **Resignations, how made.** Any officer resigning his commission must do so in writing, addressing the

adjutant-general, giving his reasons therefor, and transmit the same through his immediate commanding officer, who will make his indorsement thereon, and the resignation takes effect when accepted by the commander-in-chief and announced in orders. En. March 12, 1872. Am'd. 1877-8, 32.

§ 1927. Vacancies in elective offices, how filled. Vacancies in elective offices of the National Guard, not in active service, are filled by election. When vacancies occur at an election through the promotion of any officer, such vacancies may then and there be filled without further order. Election of company officers shall be presided over by an officer appointed for that purpose by the brigade commander, and such presiding officer shall give ten days' notice of his appointment to all parties interested, by causing the order appointing him to be posted in the company armory and read to the company. He shall, within five days following the election, report the result of the said election to the brigade commander. En. March 12, 1872. Am'd. 1877-8, 32.

§ 1928. Absence or removal, when deemed resignation. Any commissioned officer who removes from the limits of his brigade is deemed to have resigned, and the major-general, brigadier-general, or any commissioned officer who absents himself from the state for more than thirty days, without the permission of the commander-in-chief, is deemed to have resigned, and such resignation shall be announced in orders from the adjutant-general's office immediately after the fact of such absence becomes officially known. En. March 12, 1872. Am'd. 1877-8, 32.

§ 1929. Discharges, when and by whom granted. Any enlisted man may be discharged before the expiration of his term of service, by order of the commanding officer of the regiment or unattached battalion, or, if a member of an unattached company, troop, or battery, by the brigade commander, on the recommendation of his company commander, and also for any of the following reasons: To accept promotion by commission; upon removal of residence from the state, or out of the bounds of the command to which he belongs to so great a distance that, in the opinion of the commanding officer, he cannot properly perform his military duty; upon disability, established by

certificate of a medical officer; whenever such commanding officer shall approve the application of two thirds of the members of a company requesting the discharge of an enlisted man thereof, and if, at a regular meeting of a company, or of a meeting called for that purpose, two thirds of the members of a company desire by vote the discharge of one of their members, an application for the discharge of such soldier shall be made by the company commander. Or he may be dishonorably discharged for either of the following reasons: Upon conviction of felony in a civil court; by sentence of a court-martial. A character shall be attached to all discharges. Every member of the National Guard dishonorably discharged from the military service of the state of California shall be disfranchised for the period of one year next ensuing such discharge. The discharges herein provided shall be made by the commanding officer of the regiment or unattached battalion, and in the case of members of unattached companies, troops, or batteries by the brigade commander. En. March 12, 1872. Am'd. 1885, 103; 1887, 83; 1895, 182.

§ 1930. Disobedience of orders, unsoldierlike conduct; penalty. Any officer, non-commissioned officer, musician, or private who disobeys the orders of his superior, uses reproachful or abusive language to his superior, or misbehaves or demeans himself in an unofficer or unsoldierlike manner whilst under military orders, must be immediately arrested. If a non-commissioned officer or soldier on military duty, he must be disarmed and put under guard, and tried and punished by a court-martial, according to law and military usage. En. March 12, 1872. Am'd. 1877-8, 32.

Misdemeanor by failure to attend parade, disobedience, or disrespectful language: Pen. Code, sec. 653.

§ 1931. Interrupting officer or private in discharge of his duty; penalty. If any person interrupts, molests, or insults, by abusive words or behavior, any officer or private while in the performance of his military duty, he must be immediately put under guard and kept, at the discretion of the commanding officer of the forces engaged in the performance of such duty, until the setting of the sun of the same day on which the offense is committed. En. March 12, 1872.

§ 1932. Dishonorable discharge bar to re-entry. No dishonorably discharged non-commissioned officer, artificer, musician, or private, or member of a company dishonorably discharged from the National Guard, shall be permitted to again enter any company of the National Guard, except the offense is pardoned by the commander-in-chief. No dishonorably discharged officer of the National Guard of California shall be permitted to hold any office of trust or emolument, nor be permitted to again enter any company of the National Guard, except the offense be pardoned by the commander-in-chief. En. March 12, 1872. Am'd. 1877-8, 33; 1895, 182.

§ 1933. Protection of parade ground. The commanding officer of any parade, review, or drill, and the officer in charge of any rendezvous, may cause the ground selected for that purpose to be marked or designated in such a manner as not to obstruct the passage of travelers on any public highway; and if any person, during the occupation of such ground for such military purpose, enters upon such ground without the permission of the officer commanding or in charge, he may be put and kept under guard, by the order of such commander, until the setting of the sun of the same day. En. March 12, 1872.

§ 1934. By-laws. Regimental, battalion, and company rules of government and by-laws regularly adopted by a majority of the elected officers of such regiments and battalions, or members of companies, and approved by the commander-in-chief, may be adopted and enforced in such regiments, battalions, and companies, if they are not in conflict with the laws and regulations of this state. En. March 12, 1872. Am'd. 1880, 51.

§ 1935. Fines. All fines and penalties for non-attendance upon drills, parades, and inspections, legally determined and imposed under the provisions of such rules and by-laws, may be collected by action in justice's court, in the name of the people of the state of California; and the books and records of regiments, battalions, and companies, and the proceedings under which delinquents are fined, are prima facie evidence of the facts therein stated. En. March 12, 1872. Am'd. 1873-4, 36.

Fine for delinquencies touching parades: Pen. Code, sec. 652.

§ 1936. **Exemptions.** 1. All officers, warrant officers, non-commissioned officers, musicians, and privates of the National Guard and naval militia who comply with all military duties, as provided by law and regulations, are entitled to the following privileges and exemptions, viz: Exemption from road tax, and head tax of every description, except poll tax provided for in article thirteen, section twelve, of the constitution; exemption from jury duty, and service on any posse comitatus. All officers, warrant officers, non-commissioned officers, musicians, and privates who have faithfully served in the military service of this state for the space of seven consecutive years, and received the certificate of the adjutant-general certifying the same, are thereafter exempted from further military and jury duty, except in time of war. And the adjutant-general must issue such certificate of exemption when it appears that the party applying is entitled to the same.

2. All members of the National Guard of California who served in the United States volunteers, or in the United States army or navy, during the Spanish-American war of eighteen hundred and ninety-eight, or who served or may be serving during the insurrection in the Philippine Islands, and who, within one hundred and fifty days from the date of their honorable discharge therefrom, either reported for duty under the act of March twenty-first, eighteen hundred and ninety-nine, statutes of California, or entered the National Guard by enlistment or commission, or who may hereafter do so, shall be granted continuous service for any and all purposes regarding privileges and exemptions provided by law for members of the National Guard; provided, that an officer shall not have credit for continuous service as an officer unless he re-enters the National Guard in the capacity of an officer; and, also, that the men who entered the United States volunteer service in any of the volunteer organizations of this state under the calls of the president dated April twenty-third and May twenty-fifth, eighteen hundred and ninety-eight, and who were not at the time they entered such service members of the National Guard, and who, within one hundred and fifty days from the date of their honorable discharge therefrom, entered the National Guard by enlistment or commission, shall be granted continuous service for any and all purposes regarding privileges and exemptions provided by law for members

of the National Guard from the time they entered said United States volunteer service; provided, that an officer shall not have credit for continuous [service] as an officer, unless he was an officer in said United States volunteer service and enters the National Guard as an officer as above provided.

3. Officers and enlisted men heretofore or hereafter honorably discharged or mustered out of the service by reason of the disbandment or consolidation of any organization, or by the provisions of any act of the legislature, shall be, and the same are hereby entitled to all the privileges and exemptions mentioned in this section, upon making a proper application therefor; provided, they shall have served at least five years continuously in the National Guard.

4. Former members of the National Guard or naval militia who have been honorably discharged for "expiration of term of service," or on account of "removal," and have returned to the limits of their commands, and officers who have resigned, been honorably discharged, or whose terms have expired, who re-enlist or re-enter the National Guard or naval militia within ninety days from the date of their discharge or the expiration of their term of office, will be given credit for continuous service, and the enlistment considered consecutive. En. March 12, 1872. Am'd. 1873-4, 36; 1877-8, 33; 1880, 51; 1897, 408; 1901, 581.

Cal.Rep.Cit. 61, 121.

§ 1937. List of persons so exempt to be given to assessor. Each commander of a company of the National Guard must make out a list, certified under oath before a notary public, on or before the first Monday in March of each year, of every officer, non-commissioned officer, musician, and private of the company entitled to exemptions, as provided by law, with the residence of each, which list must be transmitted to the colonel, or commanding officer, of the regiment or battalion to which such company belongs, who must transmit the same, together with a list of his field and staff, and non-commissioned staff, made out in like manner, and certified by him under oath before a notary public, to the brigadier-general, which list, if correct and approved by the brigadier-general, must, by him, be served upon the county assessor of the county in which such regiments, battalions, or companies are

located; and the county assessor must thereupon note opposite the names of all persons such exemptions. En. March 12, 1872. Am'd. 1877-8, 43.

§ 1938. Commander-in-chief may disband any portion of National Guard. The commander-in-chief may, at any time, for good and sufficient cause, disband any portion of the National Guard. En. March 12, 1872. Am'd. 1877-8, 33.

§ 1939. Rules and regulations of United States army; how far applicable generally. The laws, articles of war, and the rules and regulations for the government of the army of the United States, so far as the same may be applicable and not inconsistent with the laws of this state, and the rules and regulations prescribed by the commander-in-chief, constitute the rules and regulations for the government of the National Guard. En. March 12, 1872. Am'd. 1901, 583.

§ 1940. No fees allowed to officers for administering oaths. No officer is entitled to charge or receive any fee or compensation for administering or certifying any oaths administered or certified under the provisions of this chapter. En. March 12, 1872.

§ 1941. Powers of commander-in-chief. The commander-in-chief is authorized and has power to establish and prescribe such rules and regulations, forms, and precedents, not inconsistent with the provisions of the codes, as he may deem proper for the use, government, and instruction of the National Guard, and to carry into full effect the provisions of the codes relative thereto. Such rules, regulations, forms, and precedents shall, from time to time, be revised as may be deemed necessary, and shall be promulgated in orders, and compiled in such form as may be deemed advisable for the information of the National Guard. En. Stats. 1877-8, 43. Am'd. 1880, 51; 1881, 30.

§ 1942. Colors. Right to parade. The colors carried by organizations of the National Guard shall be such as are borne by similar organizations of the United States army, except that the regimental or battalion color shall have thereon the state coat-of-arms, instead of the arms of the United States; and no military organization provided

for by the constitution and laws of the state, and receiving state support, shall, while under arms, either for ceremony or duty, carry any device, banner, or flag of any state or nation, except that of the United States or of the state of California. It shall not be lawful for any body of men whatever, other than the regular organized National Guard of this state, and the troops of the United States, to associate themselves together as a military company or organization, to drill or parade with arms in this state, without the license of the governor thereof, which license may at any time be revoked; provided, that students in educational institutions where military science is a part of the course of instruction, may, with the consent of the governor, drill and parade with arms, in public under the superintendence of their instructor; and provided further, that nothing herein contained shall be so construed as to prevent benevolent or social organizations from wearing swords. Any person or persons violating any of the provisions of this section shall be guilty of a misdemeanor and subject to arrest and punishment therefor. En. Stats. 1877-8, 40. Am'd. 1880, 55; 1893, 104; 1895, 183.

See Const. Cal., art. VIII, sec. 2, to which this section conforms.

§ 1943. **Pension.** Every officer or soldier wounded or disabled in the service of the state shall have reasonable expenses paid him, and the widow and children of every officer or soldier killed in the service of the state shall be suitably provided for by the legislature. ,En. Stats. 1877-8 41.

§ 1944. **Forfeiture of claims.** All claims against any appropriation made for military purposes payable to commanding officers, shall, at the discretion of the board of military auditors, be forfeited to the state unless the demand is presented within six months after the time it becomes due. En. Stats. 1877-8, 41.

§ 1945. **Service medals.** The state shall provide a bronze service medal, with a bronze bar attached thereto, for ten years' active service; for fifteen years' active service a silver bar shall be attached; and for twenty years' active service, a gold bar shall be attached to the same medal. There shall be no other or different medals for service.

Such medals shall be prepared and issued by the adjutant-general, only, upon application of the party entitled thereto, and upon proof of such service from the records of the National Guard. En. Stats. 1893, 109. Am'd. 1897, 408.

§ 1946. Decorations which may be worn. The insignia of the Veterans of the Mexican War, the Military Order of the Loyal Legion, the Grand Army of the Republic, and of armies or army corps, indicating actual services in the field, medals presented by the United States, any state, or by the Native Sons of the Golden West, indicating service in the Spanish-American war, and badges indicating long and faithful service in the National Guard of this and other states, and state decorations for marksmanship, may be worn by officers and men of the National Guard entitled to them, upon the left breast, in one line, on the uniform coat or service blouse, the top of the ribbons on a line with the armpit, in the order named above, from right to left. No other medals, badges, ribbons, or decoration shall be worn. En. Stats. 1897, 408. Am'd. 1901, 583.

ARTICLE II.

COMPANIES, AND THE DISTRIBUTION OF ARMS.

§ 1951. Applications for leave to organize companies.
§ 1952. If accepted the brigadier-general must appoint a person to organize.
§ 1953. Organization.
§ 1954. Brigadier-general to act upon certificate, and transmit it.
§ 1955. Company to be listed and officers commissioned.
§ 1956. Non-commissioned officers of companies.
§ 1957. Commanders of batteries.
§ 1958. Company name or number.
§ 1959. Oath and term of enlistment.
§ 1960. Person not to be member of two companies at the same time.
§ 1961. Companies, how armed and equipped.
§ 1962. Number of officers and privates.
§ 1963. Requisition for arms and equipments.
§ 1964. Proceedings on approval of requisition.
§ 1965. Bond of commanding officers.
§ 1966. Same.
§ 1967. Duplicate receipts.
§ 1968. Inspection of arms, etc.
§ 1969. Repair of arms, etc.
§ 1970. Inspection and musters.
§ 1971. Same.
§ 1972. Same.
§ 1973. Retired list.
§ 1973a. Same.
§ 1974. Examination of officers.
§ 1975. Candidates to be thoroughly examined.
§ 1976. Applications for membership.
§ 1977. Use of uniforms, property, etc.

Part 3 Title 4

§ 1951. Applications for leave to organize companies. Whenever a sufficient number of persons, residents of any county in this state, subject to military duty, subscribe a call for the organization of a company, the adjutant-general, upon the application of such persons, and with the approval of the general of brigade, must present the same to the board for the organization of the National Guard. En. March 12, 1872.

§ 1952. If accepted the brigadier-general must appoint a person to organize. If such company is accepted, the adjutant-general must direct the brigadier-general to appoint some person, resident of the county, to open a book in which to enter the names of persons so applying, and must fix a time and place of meeting for the purpose of organization, by giving ten days' notice thereof, by publication in some newspaper, or by posting notices in at least three public places in the county. En. March 12, 1872.

§ 1953. Organization. The person appointed must:

1. Preside at such meeting and organize the same.

2. Superintend the election for commissioned officers of the company, which must be by ballot.

3. Make out, after such election, a list of persons organized, a certificate of each officer elected, together with a copy of the proceedings of the meeting, and a copy of his appointment, and of the notice of the meeting, certified by him, and transmit them to the brigadier-general commanding the brigade. En. March 12, 1872.

§ 1954. Brigadier-general to act upon certificate, and transmit it. The brigadier-general must, if found correct, transmit the same, with his approval, to the adjutant-general. En. March 12, 1872.

§ 1955. Company to be listed and officers commissioned. 1. If such company has been organized and the officers elected in accordance with the provisions of law, orders, and regulations, the company must be listed in the office of the adjutant-general as a company of the National Guard, and the officers elected, if commissioned, hold office for the term of two years.

2. All commissioned officers of the National Guard shall

be commissioned by the governor, but he may refuse to issue a commission to any officer elected or appointed, if, in his opinion, the person elected or appointed is in any way unqualified or unworthy to be an officer in the National Guard. En. March 12, 1872. Am'd. 1880, 51.

§ 1956. Non-commissioned officers of companies. All company non-commissioned officers of the National Guard must be nominated by commanders of their respective companies, subject to the approval of the commanders of the regiment or battalion; and such non-commissioned officers cannot thereafter be removed or reduced in rank except as herein provided, or by the commander of the regiment or battalion, for neglect of duty or other sufficient cause. En. March 12, 1872.

§ 1957. Commanders of batteries. Commanders of batteries not attached to regiments, and unattached companies, have the same authority with non-commissioned officers as is herein conferred upon commanders of regiments and battalions. En. March 12, 1872. Am'd. 1891, 122.

§ 1958. Company name or number. Each company of the National Guard may adopt a distinct name; but, if attached, must be known by a particular letter or number in the regiment or battalion to which it belongs. En. March 12, 1872.

§ 1959. Oath and term of enlistment. All enlisted men, on entering the National Guard, must take the prescribed oath, and join for not less than three years' service; provided, that any man having served one enlistment satisfactorily may re-enlist for one, two, or three years, at his option. En. March 12, 1872. Am'd. 1891, 122; 1893, 104.

§ 1960. Person not to be member of two companies at the same time. No person can be a member of two companies at the same time; and any member of a company who removes beyond the limits of the county may be discharged from such company; and such discharge, as in all other cases, must be announced in orders from proper authority, and copies of all orders announcing discharges must be forwarded to brigade and general headquarters. En. March 12, 1872. Am'd. 1880, 51.

§ 1961. Companies, how armed and equipped. The companies of the National Guard are armed and equipped in the same manner as similar corps in the United States army. En. March 12, 1872.

§ 1962. Number of officers and privates. 1. The numerical strength, rank, titles, and insignia of rank of the companies, troops, and batteries, and their officers and men, of the National Guard, and divisions of the naval militia, shall conform to the laws, rules, and regulations of the United States army and navy, so far as the same may be effectively applicable; and upon changes being made in the said laws, rules, and regulations of the United States army and navy, the commander-in-chief shall cause changes to be made in rules and regulations of the National Guard and naval militia to correspond thereto, so far as they may be effectively applicable as aforesaid.

2. Each company, troop, battery, or division of the naval militia may have not to exceed ten honorary members, who shall pay fifty dollars per annum each into the company, troop, battery, or naval division treasury, and shall thereupon be entitled to all exemptions to which those on the active list are entitled, and shall not be required to drill or perform any military duty by reason of such membership.

3. The naval militia shall be commanded by a captain. There shall also be the following commissioned officers, viz: One commander, one lieutenant-commander, who, in order of rank, in the absence or disability of the superior, shall perform his duties, and shall at all times assist the commanding officer in the performance of his duties; one chief engineer, with the rank of lieutenant-commander, and one lieutenant. The lieutenant shall be subject to detail by the commanding officer of the naval militia as navigating and ordnance officer or such other proper detail as such commanding officer may desire. The above officers to be elected in the same manner and to hold office for the same term as field officers of the National Guard, and immediately upon approval of this act an election shall be ordered for all of said officers. All elections for officers in the naval militia shall be ordered by the commander-in-chief. There may also be a chaplain, who shall be of the same grade and rank as in the United

States navy, who shall be appointed by the commander-in-chief upon recommendation of the commanding officer of the naval militia. Each division of the naval militia shall be commanded by a lieutenant, and shall include one lieutenant junior grade, two ensigns, and not less than fifty nor more than one hundred petty officers and seamen. The commissioned officers of each division shall be elected in the same manner and hold office for the same term as company officers of the National Guard. The lieutenant and the lieutenant junior grade of the engineer division shall each hold the grade of passed assistant engineer, and the ensigns of the engineer division shall each hold the grade of assistant engineer. All engineer officers shall be recognized engineers or machinists of at least two years' standing. The officers of the pay department of the naval militia shall be staff officers, on the staff of the commanding officer of the naval militia, and consist of the following commissioned officers, viz: One paymaster with the rank of lieutenant-commander, one passed assistant paymaster with the rank of lieutenant, and there may be one assistant paymaster with the rank of ensign, all to be appointed and qualified as are other staff officers. The medical department of the naval militia shall be allowed the following commissioned officers, viz: One chief surgeon with the rank of lieutenant-commander, one surgeon of the rank of lieutenant, and there may be to each division of the naval militia one assistant surgeon with the rank of lieutenant junior grade. The appointment of the commissioned officers of the medical department of the naval militia shall be made by the commander-in-chief, upon the recommendation of the commanding officer of the naval militia, and no person shall receive the appointment of chief surgeon, surgeon, or assistant surgeon unless he is a licensed graduate of a medical school, and unless he shall have been examined and approved by a medical board, consisting of not less than three surgeons, designated by the commander-in-chief, upon the recommendation of the surgeon-general. The warrant officers, chief petty officers, and petty officers of the naval militia shall be the same as in the United States navy, and of such numbers as the exigencies of the service may require. Warrants for warrant officers may be issued by the adjutant-general upon the recommendation of the command-

ing officer of the naval militia. Chief petty officers and petty officers shall be appointed by the commanding officer of the naval militia. A band of musicians may be enlisted by the commanding officer of the naval militia, to consist of not less than twenty nor more than twenty-five members, to be organized and rated the same as in the United States navy.

4. The organization of the naval militia shall conform generally to the provisions of the laws of the United States; and the system of discipline and exercise shall conform, as nearly as may be, to that of the navy of the United States, as it now is, or may hereafter be, prescribed by congress. When not otherwise provided for, the government of the naval militia shall be controlled by the provisions of the Political Code relating to the National Guard of California, and the governor shall have power to alter, divide, annex, consolidate, or disband the same, whenever, in his judgment, the efficiency of the state forces will thereby be increased, and he shall have power to make such rules and regulations as may be deemed proper for the use, government, and instruction of the naval militia; but such rules and regulations shall conform as nearly as practicable to those governing the United States navy.

5. The duty of the naval militia required by law, or any part of it, may be performed afloat in United States vessels. Officers and men of the naval militia mustered temporarily into the service of the United States for instruction and drill, and receiving compensation therefor from the United States, shall not, during the same term, be entitled to compensation from the state.

6. The governor is authorized to apply to the president of the United States for the detail of commissioned and petty officers of the navy, to act as inspectors and instructors in the art of naval warfare.

7. The naval militia battalion and divisions shall receive the same allowance from the state as infantry battalions and companies. En. March 12, 1872. Am'd. 1877-8, 33; 1877-8, 42; 1880, 56; 1881, 30; 1885, 104; 1889, 429; 1895, 183; 1897, 408; 1901, 583.

§ 1963. Requisition for arms and equipments. When a company is organized its commanding officer may make a requisition through the proper military channel for such

arms and accouterments, ammunition, clothing and stores as are required. En. March 12, 1872.

Military academies, act to furnish arms for: Stats. 1872, p. 121; see General Laws, title Military Academies.

Arms, equipments, etc., misdemeanor to unlawfully retain or dispose of: Pen. Code, secs. 442, 443.

§ 1964. **Proceedings on approval of requisition.** If the commander-in-chief approve the requisition he must make an order upon the back thereof directing the issue by the adjutant-general, who must immediately notify the officer making the requisition that the arms, accouterments, and ammunition, or any portion thereof, are ready to be issued. En. March 12, 1872.

§ 1965. **Bond of commanding officers.** The commanding officer of each troop, battery, company, naval division, or signal corps must give such bonds and security as may be required by the adjutant-general to secure the state and the company from loss on account of misuse or misapplication of any state property or funds. Said bond must be with two or more good and sufficient sureties conditioned upon his faithful performance of all duties, and accounting for all property and moneys, both state and company funds, of which the commander, as ex-officio treasurer, shall be the custodian. En. March 12, 1872. Am'd. 1880, 57; 1897, 410.

§ 1966. **Same.** Such bonds being to his satisfaction, and on receiving duplicate receipts from such officer, the adjutant-general must make the issue. En. March 12, 1872. Am'd. 1897, 410.

1967. **Duplicate receipts.** The adjutant-general must file one copy of such receipts in his office, and transmit the other to the general of the brigade. En. March 12, 1872.

§ 1968. **Inspection of arms, etc.** All arms, equipments, and military stores, books, accounts, and records of all kinds, are subject to examination by the inspectors and ordnance officers of the state, and by any other officer designated by the commander-in-chief or other commanding officer for that purpose. En. March 12, 1872. Am'd. 1877-8, 34.

§ 1969. **Repair of arms, etc.** If such officer finds any of such property out of repair, injured, or defective, he must

immediately notify the facts to the commander-in-chief, through the proper channel, who, if the damages are not repaired, and the defects and losses supplied within a reasonable time, must order the same to be done under the direction of some officer, and the vouchers for the expenses thereof, when audited by the state board of military auditors, must be paid, on the warrant of the controller, out of the appropriation for military purposes. En. March 12, 1872. Am'd. 1877-8, 43.

§ 1970. **Inspection and musters.** The commander-in-chief shall order an annual inspection and muster of the National Guard between January first and June thirtieth, each year; the dates of inspection and details thereof shall be determined by the division, brigade, and naval battalion commanders, respectively; and the commanding officer of each company must make out and certify the necessary muster rolls, showing the names and number of the members of the company, the officers in the order of their rank, and the privates in alphabetical order, and also a list of the ordnance, ordnance stores, clothing, and other property of the state, in the possession of the company. He must transmit, through the proper military channels, one copy of the roll and list attached to each superior headquarters. En. March 12, 1872. Am'd. 1877-8, 34; 1880, 56; 1891, 122; 1895, 184; 1897, 411.

Act authorizing acquisition of site for camp of instruction: See post, Appendix, title National Guard.

1971. **Same.** If such company forms part of any organized battalion or regiment, the commanding officer thereof must transmit the same, with a muster roll of the field and staff officers of his regiment or battalion, to the adjutant-general, through the proper channels of military correspondence. En. March 12, 1872.

§ 1972. **Same.** When any regiment or battalion is composed of companies located in any one town or city of the state, the same may be mustered by its commanding officer as a regiment or battalion. En. March 12, 1872.

§ 1973. **Retired list.** 1. Any commissioned officer who has become disabled and incapable of longer performing the active duties of his office may, upon his own application, be placed upon the retired list; provided, that such

disability may have been incurred while in the performance of duty.

2. If an officer for either of the above reasons, desires to be placed upon the retired list, he shall make application to his brigade commander to appoint a board of surgeons, who shall examine him as to his disability, and if such disability has not been incurred by reason of any dereliction, they shall, if they deem proper, recommend that his application be granted; and upon approval of such application by the brigade commander and the commander-in-chief, the adjutant-general shall issue orders retiring such officer.

3. Any commissioned officer, who shall have served as such in the National Guard of this state for a continuous period of eight years, or for a period not continuous, of ten years, may, upon his own application, be placed upon the retired list and withdrawn from active service and command with the rank held by him at the time such application is made. And any commissioned officer, who shall have at any time heretofore served as such in the militia or National Guard of this state for a continuous period of eight years, shall, upon his own application and due proof of such service, be placed upon the retired list with the rank held by him at the time of the expiration of his commission. Upon applications, as above provided, being duly made and approved, the commander-in-chief shall cause orders to be issued retiring the officer who makes application therefor in accordance with the provisions of this section; provided, however, that nothing herein contained shall be construed to permit the placing upon the retired list of any officer who shall have been dishonorably dismissed the service.

4. The officers on the retired list shall only be subject to detail for duty by orders from the commander-in-chief; and he shall cause to be issued such orders as he may deem necessary, detailing them for duty upon boards of officers for military purposes, courts-martial, and courts of inquiry, and for such other military duties as, in his judgment, may be advisable. When, however, officers on the retired list are detailed for active duty other than upon boards of officers, courts-martial, and courts of inquiry, they shall only be entitled to the rank which properly belongs to the office, the duties of which they are detailed

to perform. When any duty ends, or the detail is canceled, the officer shall again return to the retired list with his former retired rank. A roster of all officers on the retired list shall be kept in the adjutant-general's office, division headquarters, and at the brigade headquarters.

5. Officers on the retired list shall, on all occasions of duty, and all occasions of ceremony, take rank next to officers of like rank upon the active list. En. Stats. 1877-8, 34. Am'd. 1880, 51; 1881, 31; 1891, 123; 1893, 104; 1897, 411.

§ 1973a. Same. 1. Any officer who was upon the "retired list" of the National Guard, and entered the United States army or navy for service during the Spanish-American war or in the Philippine Islands, shall be again placed upon the retired list, with the same rank he had on the retired list at the time of his entry into such United States service, upon his application, after his honorable discharge from said United States service, and any officer of the National Guard, who was on the active list and entered the said United States service, may be placed upon the "retired list," after his honorable discharge from said service, with the rank held by him in the National Guard at the time of his acceptance of a commission in the United States army or navy; provided, he shall have had eight years' continuous service or ten years not continuous, including both service in the National Guard and in the United States army.

2. Any officer heretofore or hereafter honorably discharged or mustered out of the service by reason of the disbandment or consolidation of any organization, or by the provisions of any act of the legislature, shall be entitled to be placed upon the "retired list" upon his application therefor, with the rank held by him at the time of such discharge; provided, he shall have had five years' continuous service as an officer in the National Guard. En. Stats. 1901, 585.

§ 1974. Examination of officers. 1. Every elected or staff officer of the National Guard must, upon his appointment or reappointment, election or re-election, to any office in the National Guard, appear before an examining board for examination as to his qualifications for the office to which he has been appointed or reappointed, elected or re-elected; provided, that the provisions of this section do not apply

to surgeons, judges-advocate, chaplains, or the staff of the commander-in-chief;

2. Such boards shall consist of three officers for each brigade, three officers for the naval battalions, and three officers for the division staff. All of such boards to be designated by the commander-in-chief, and to be removable at his pleasure;

3. The officer duly appointed to preside at any election shall, immediately after declaring the result of such election, notify the officer or officers elected that they must appear before the examining board for examination, when notified by that board;

4. If the officer elected or re-elected, and duly notified, does not appear before the said examining board when summoned by them, he shall be deemed to have declined his commission, and there shall be another election ordered. The filing of a proper certificate of said board with the officer ordering the election, that the officer has failed to pass an examination, or declined to appear before the board when notified, shall be deemed sufficient for ordering a new election. En. Stats. 1877-8, 34. Am'd. 1880, 52; 1885, 104; 1897, 412.

§ 1975. **Candidates to be thoroughly examined.** The board shall thoroughly examine the candidate for commission as to his military and general qualifications, and if, in the opinion of the majority of the board, he is duly qualified, the fact shall be duly certified to the commander-in-chief. The board shall examine the candidate for a commission as to his knowledge in the following:

1. The prescribed tactics.

2. The rules and regulations governing the United States army and the National Guard of California.

3. The revised articles of war.

4. The revisions of the codes of California relative to the National Guard.

5. Forms of military orders, correspondence, records, and also as to general qualifications. En. Stats. 1877-8, 35; 1877-8, 44. Rep. 1880, 53. Am'd. 1880, 53.

In 1878, the legislature amended section 1975, and also added a new section of the same number. Amendments 1877-8, 35, 44. The amendments of 1880, pp. 51 and 53, purported to repeal section 1975, but named an erroneous

date as to its passage. Compare amendments 1877-8, pp. 35 and 44, with the text.

§ 1976. Applications for membership. Application or propositions for membership in any troop, battery, naval division, or company of the National Guard shall be made only at a regular weekly meeting or assemblage of such organization; and the names of such applicants shall be posted in a conspicuous place in its headquarters or armory, until the next succeeding regular weekly meeting or assemblage of such organization, at which time, and not before such applicants may be balloted for. En. Stats. 1877-8, 45. Am'd. 1897, 412.

1977. Use of uniforms, property, etc. 1. No soldier shall wear or use, except when on military duty, or by special permission of his commanding officer, any uniform or other article of military property belonging to the state, or to the company of which he is a member.

2. No officer in charge of public property for military use shall transfer any portion thereof either as a loan or permanently, without the authority of the next superior commander.

3. Although an officer who has receipted for public property is personally and officially accountable therefor, yet all commanding officers are also responsible that the best arrangements are made for the security and safety of all public property within their commands, and for the strict observance of the regulations in regard to its care, removal, use, or issue. It is, therefore, their duty to see that none but faithful and reliable persons are employed for its care, or allowed control over or access to it.

4. No parade or voluntary service shall be performed by any regiment, battalion, or company under arms, or in uniform, without the approval of the next superior authority. En. Stats. 1880, 53.

ARTICLE III.

REGIMENTS AND BATTALIONS.

§ 1980. Signal corps.
§ 1981. Hospital and ambulance corps. (Repealed.)
§ 1982. Regiments and battalions of National Guard.
§ 1983. Regiments of cavalry. (Repealed.)
§ 1984. Organization of regiments and battalions.
§ 1985. Field officers, mode of election.
§ 1986. Returns of election.
§ 1987. Battalions of light artillery. (Repealed.)
§ 1988. Officers and regulations for. (Repealed.)
§ 1989. Drills of. (Repealed.)
§ 1990. Staffs of colonel, lieutenant-colonel, and major. (Repealed.)
§ 1991. Surgeons, judges-advocate, engineers and chaplains.
§ 1992. Drum or trumpet corps. (Repealed.)
§ 1993. Bands.

§ 1980. Signal corps. There shall be mustered in and attached to the National Guard a detachment of signalmen, which shall be divided into three signal corps, each to consist of not less than twenty, nor more than forty-five men; provided, that each corps shall be located in its entirety at one place. Each corps of forty men, or over, shall be officered by one captain, one first lieutenant, three sergeants, and four corporals. Each corps of less than forty men shall be officered by one first lieutenant, three sergeants, and four corporals. The commissioned officers shall be elected, qualify, and serve as is provided for other officers of the line. The non-commissioned officers shall be appointed by the brigade commander upon recommendation of the brigade signal officer. The brigade signal officer shall have direct supervision of the detachment of signal corps and the corps commander shall report to him direct. Whenever the signal corps shall be mounted in the performance of active duty, each officer and man so mounted shall receive a per diem of two dollars during the time of such service. Whenever a state appropriation shall be made for supplying horses to mounted officers and command, the signal corps shall receive a proportionate allowance from said fund; provided, that mounted service is being performed by the corps at such time. En. Stats. 1889, 432. Am'd. 1891, 123; 1895, 184; 1897, 412.

§ 1981. Hospital and ambulance corps. (Repealed.) En. Stats. 1893, 109. Am'd. 1897, 413. Rep. 1901, 586.

§ 1982. Regiments and battalions of National Guard. A regiment of the National Guard consists of not less than eight nor more than twelve companies. Each regiment of twelve companies shall be divided into three battalions; regiments of a less number of companies than twelve, into two or three battalions, at the discretion of the commander-in-chief. En. March 12, 1872. Am'd. 1880, 53; 1893, 105; 1897, 413; 1901, 586.

§ 1983. Regiments of cavalry. (Repealed.) En. March 12, 1872. Am'd. 1895, 185. Rep. 1901, 586.

§ 1984. Organization of regiments and battalions. The organization of a regiment, and of the battalions and companies composing the same, shall be the same as are now provided for or may hereafter be provided for by the laws and regulations governing the United States army, and the staff of a colonel commanding a regiment shall, at all times, be the same as that of a colonel commanding a regiment in the United States army; provided, that in addition thereto there may be appointed upon the staff of a colonel an inspector of rifle practice with the rank of first lieutenant; provided, that where there are sufficient troops of cavalry in any one brigade, but not sufficient to constitute a regiment, they may be organized by the commander-in-chief into a squadron, and be commanded by a major, and shall have such other officers as the commander-in-chief may designate; and also, if at any time there are sufficient batteries of artillery to constitute a battalion or regiment, the same may be organized in such manner and with such battalion and regimental officers as the commander-in-chief may direct; provided, that when a regiment is composed of less than twelve companies, the number of officers of such regiment shall be proportionately less, in the discretion of the commander-in-chief; and provided further, that the commander-in-chief may, in his discretion, at any time, reduce or increase the number of non-commissioned officers and privates.

2. No person shall be eligible for election as a field officer until he shall have served at least two years in the National Guard of this state, or in the United States military service, as a line officer.

3. All regimental or battalion staff officers shall be nominated by their respective commanders, and if such

nomination be approved by the commander-in-cnief, they shall be commissioned accordingly and shall hold office at the pleasure of the officer making the nomination, o- until their successors are nominated and qualified. En. March 12, 1872. Am'd. 1877-8, 35; 1893, 106; 1895, 185; 1897, 413; 1901, 586.

§ 1985. Field officers, mode of election. Field officers are elected by the commissioned officers of the companies comprising a regiment or battalion; and if the regiment or battalion is already formed, by the field and company officers thereof, and they shall hold office for the term of four years. Company, troop, and battery officers are elected by the members of such organization, and shall hold office for the term of two years. Two months previous to the expiration of the term of service of any officer, or upon a vacancy occurring among the officers of any organization, the general of brigade to which the same is attached must order an election therefor and designate an officer to preside thereat, who must give ten days' notice of his appointment, of the time and place of holding the election, and of the office to be filled, which notice shall be issued and promulgated as orders usually are in the command. En. March 12, 1872. Am'd. 1877-8, 35; 1895, 185; 1901, 587.

§ 1986. Returns of election. Such presiding officer must make return in duplicate of the election held, to the officer ordering the election, who shall forward one copy of said election return to the examining board of such organization, and shall retain the other copy at his headquarters. Upon receiving notice from the examining board that the officer or officers elect have passed a successful examination, which notice shall be indorsed upon the return of election sent to said board, he shall forward the same through regular military channels for approval to the adjutant-general, who, upon finding the same in accordance with the provisions of law, orders, and regulations, must notify the commander-in-chief thereof for his consideration, who, if he approves, shall issue the commission.

In all elections for commissioned officers a majority of the votes of those present (a majority of those entitled to vote being present) shall be necessary to a choice. En. March 12, 1872. Am'd. 1880, 53; 1897, 414.

§ 1987. Battalions of light artillery. (Repealed.) En. March 12, 1872. Rep. 1895, 186.

§ 1988. Officers and regulations for. (Repealed.) En. March 12, 1872. Rep. 1895, 186.

§ 1989. Drills of. (Repealed.) En. March 12, 1872. Rep. 1895, 186.

§ 1990. Staffs of colonel, lieutenant-colonel, and major. (Repealed.) En. March 12, 1872. Am'd. 1877-8, 35; 1880, 54; 1881, 32; 1887, 84; 1889, 429; 1891, 124; 1893, 106; 1895, 186; 1897, 414. Rep. 1901, 587.

§ 1991. Surgeons, judges-advocate, engineers, and chaplains. All surgeons and assistant surgeons of the National Guard shall be of at least five years' practice in surgery prior to their appointment; all judges-advocate of the National Guard shall be members of the bar of the supreme court of the state of California; all engineer officers of the National Guard shall be regular civil engineers; all chaplains shall be regularly ordained ministers. En. March 12, 1872. Rep. 1880, 55. En. 1895, 186.

§ 1992. Drum or trumpet corps. (Repealed.) En. March 12, 1872. Am'd. 1880, 56; 1893, 106. Rep. 1901, 587.

§ 1993. Bands. When bands of music have not been organized for any regiment or battalion in the manner provided in the regulations of the army of the United States, such regiment or battalion, through its commanding officer, may hire the services of any band of musicians at their own expense; and the persons so employed are, during the term of their engagement, subject to the same laws and regulations that govern the military with which they may serve. En. March 12, 1872.

ARTICLE IV.

DIVISION AND BRIGADES.

§ 2003. Brigade organization.
§ 2004. The brigades compose one division.
§ 2005. New counties, how attached. (Repealed.)
§ 2006. Staff of major-general.
§ 2007. Staff of brigadier-general.
§ 2008. Inspectors of rifle practice.
§ 2009. Sanitary corps.

§ 2003. Brigade organization. The National Guard of the state of California is hereby organized into three brigades, each commanded by a brigadier-general; the limits of each brigade to be fixed by the commander-in-chief. All officers deprived of office by reason of the act approved March twenty-sixth, eighteen hundred and ninety-five, are hereby placed upon the retired list, with the rank held by each one when said act went into effect. En. March 12, 1872. Am'd. 1889, 415; 1893, 106; 1895, 186; 1897, 112; 1897, 415.

There was also passed at the same session the following section of the same number:

2003. The National Guard of the state of California is hereby organized into three brigades, each commanded by a brigadier-general, the limits of each brigade to be fixed by the commander-in-chief. Brigadier-generals and their staff officers, colonels, and their staff officers, and all regimental and company officers deprived of their office by reason of the reorganization herein provided for, or by reason of the provisions of an act of the legislature, approved March twenty-sixth, eighteen hundred and ninety-five, entitled "An act to amend sections one thousand nine hundred and twelve, one thousand nine hundred and nineteen, one thousand nine hundred and twenty-three, one thousand nine hundred and twenty-nine, one thousand nine hundred and thirty-two, one thousand nine hundred and forty-two, one thousand nine hundred and sixty-two, one thousand nine hundred and seventy, one thousand nine hundred and eighty, one thousand nine hundred and eighty-three, one thousand nine hundred and eighty-four, one thousand nine hundred and eighty-five, one thousand nine hundred and ninety, two thousand and three, two thousand and four, two thousand and seven, two thousand and twenty-two, two thousand and twenty-four, two thousand and twenty-seven, two thousand and forty, two thousand and forty-eight, two thousand and seventy-six, two thousand and eighty-three, two thousand and ninety-four of the Political Code of the state of California, and to add one new section thereto, to be known and numbered as section one thousand nine hundred and ninety-one, and to repeal section one thousand nine hundred and eighty-seven, one thousand nine hundred and eighty-eight, one thousand nine hundred and eighty-nine,

and two thousand and five, all relating to the National Guard of California," and all officers mustered out of the service by reason of such reorganization under general orders from the adjutant-general's office of the state of California, numbers eight, ten, eleven, thirteen, seventeen, series of eighteen hundred and ninety-five, and general orders numbers two and three, series of eighteen hundred and ninety-six, respectively; (provided, such officers shall have served as commissioned officers at least five years in the National Guard of California), be and the same hereby are placed upon the retired list with their rank; provided, that such officers shall make application to be placed on the retired list in accordance with subdivision three of section nineteen hundred and seventy-three of the Political Code, and that all enlisted men mustered out of the service under the provisions of the reorganization of the National Guard of California, mentioned in section one of this act, shall be, and the same hereby are entitled to all of the privileges and exemptions mentioned in section nineteen hundred and thirty-six of the Political Code, upon making a proper application therefor; provided, such enlisted men shall have served at least five years in the National Guard of California. En. March 12, 1872. Am'd. 1889, 415; 1893, 106; 1895, 186; 1897, 112; 1897, 415.

§ 2004. The brigades compose one division. The three brigades of the National Guard compose a division commanded by a major-general. En. March 12, 1872. Am'd. 1893, 107; 1895, 187.

§ 2005. New counties, how attached. (Repealed.) En. March 12, 1872. Rep. 1895, 187.

§ 2006. Staff of major-general. The staff of the major-general consists of one assistant adjutant-general, with the rank of colonel, who shall be chief of staff; one engineer officer, one division inspector, one quartermaster, one commissary, one paymaster, one ordnance officer, one judge-advocate, one inspector of rifle practice, and one signal officer, each with the rank of lieutenant-colonel; one surgeon with the rank of colonel, two aides-de-camp with the rank of major, and four staff orderlies with the rank of sergeant-major, all of whom, except the surgeon,

shall be appointed by the major-general, and hold office at his pleasure, or until their successors are appointed and qualified. The surgeon mentioned in this section shall be appointed as prescribed by section two thousand and nine of the Political Code. En. March 12, 1872. Am'd. 1877-8, 36; 1889, 430; 1897, 415.

§ 2007. **Staff of brigadier-general.** The staff of the brigadier-general consists of one assistant adjutant-general, with the rank of lieutenant-colonel, who shall be chief of staff; one engineer officer, one brigade inspector, one quartermaster (who shall act as paymaster), one commissary, one judge-advocate, one inspector of rifle practice (who shall also act as ordnance officer), and one signal officer, each with the rank of major; one surgeon, with the rank of lieutenant-colonel; two aides-de-camp, with the rank of captain, and two staff orderlies, with the rank of sergeant-major. All of whom, except the surgeon, shall be appointed by the brigadier-general, and hold office at his pleasure, or until their successors are appointed and qualified. The surgeon mentioned in this section shall be appointed as prescribed by section two thousand and nine of the Political Code. En. March 12, 1872. Am'd. 1877-8, 36; 1885, 104; 1887, 87; 1889, 430; 1895, 187; 1897, 415.

§ 2008. **Inspectors of rifle practice.** It shall be the duty of the inspector-general of rifle practice to exercise general supervision over the rifle practice of the National Guard; to inspect, or cause to be inspected, from time to time, all ranges and practice grounds, and see that the prescribed regulations for rifle practice are carried out by the National Guard, and that the proper returns thereof are made out; to report direct to general headquarters, from time to time, the improvement in marksmanship among the uniformed forces, together with all other matters pertaining to his duties. Commanders of brigades, regiments, and companies shall furnish to the inspector-general of rifle practice such information as he shall require in regard to the rifle practice of their commands, and as to the number and condition of all targets or other military property of the state issued to their respective commands for use in rifle practice; and if, at the conclusion of his inspection of any armory, range,

or practice ground, he shall find any property appertaining to rifle practice, which ought to be kept therein, missing, injured, unfit for use, or deficient in any respect, or that such range or practice ground is dangerous, he shall forthwith report the facts in respect thereto to general headquarters. He may, from time to time, examine the officers upon the theory and practice of marksmanship, and upon the system of instruction of rifle practice. It shall be his duty to attend, as far as practicable, all general competitions in marksmanship among the National Guard, and see that such competitions are conducted with fairness and according to prescribed regulations. He shall make an annual report to general headquarters, in which he shall state the result of all competitions in marksmanship, with the names of the winners, together with such suggestions as he may see fit. The brigade inspectors of rifle practice shall have supervision of all matters appertaining to rifle practice within the limits of their respective brigades, under the direction of the brigade commander, as above prescribed for the inspector-general of rifle practice. They shall report to such inspector-general of rifle practice, whenever required by him, the condition of rifle practice in their respective brigades, and what practice of that description has been carried on during any period, and shall also, at his request, report to him upon any matter relating to rifle practice which may require examination within their respective brigades. They shall attend the competition for any prizes that may be offered by the state to the command to which they are attached, or that may be arranged between any of the companies of their brigades, and see that the same are conducted with fairness and according to the prescribed regulations for such competitive matches, and report to the inspector-general of rifle practice the result of such competitions, with the names of the winners, together with such suggestions as they may see fit to make. Regimental and battalion inspectors of rifle practice shall have supervision of all matters appertaining to rifle practice within the limits of their respective regiments or battalions, as prescribed for the brigade inspector of rifle practice. They shall report to said brigade inspector of their respective brigades, the condition of rifle practice in their respective regiments or battalions,

and what practice has been carried on during any period, and shall also, at his request, report to him upon any matter relating to rifle practice which may require examination within their respective regiments or battalions. They shall attend the competitions for any prize that may be offered, or that may be arranged between any of the companies of their respective regiments or battalions, and see that the same are conducted with fairness and according to the prescribed regulations for such competitive matches, and report to the brigade inspector of rifle practice the result of all such competitions, with the names of the winners, together with such suggestions as they may see fit. En. Stats. 1897, 415.

§ 2009. **Sanitary corps.** 1. The medical department of the National Guard of California is hereby organized into a sanitary corps, which shall consist of one surgeon-general, with the rank of colonel, who shall be the executive head of the corps, and such number of commissioned officers, non-commissioned officers, and privates as may be required to furnish an efficient service for the organized strength of the National Guard.

2. The commissioned strength of the sanitary corps shall be determined by the organization of the National Guard, to wit: To each organized division, one chief surgeon, with the rank of colonel; to each organized brigade, one chief surgeon, with the rank of lieutenant-colonel; to each organized regiment, one surgeon, with the rank of major; and a surgeon, with the rank of captain, for each battalion.

3. The appointment of the commissioned officers of the sanitary corps shall be made by the commander-in-chief, upon the recommendation of the division, brigade, regimental, or battalion commanders.

4. The commander-in-chief is hereby authorized to transfer enlisted men of the National Guard to the sanitary corps, or cause to be enlisted for the same as many hospital sergeants, hospital corporals, and privates as the service may require, who may be mounted, and permanently attached to the sanitary corps, under such regulations as the commander-in-chief may prescribe.

5. No person shall receive the appointment of surgeon unless he is a licensed graduate of a medical school, and

unless he shall have been examined and approved by a medical board, consisting of not less than three surgeons, designated by the commander-in-chief, upon the recommendation of the surgeon-general.

6. No person shall be transferred to or enlisted into the sanitary corps unless he shall have passed a satisfactory examination, as to his qualifications before a board of medical officers, to be appointed by the commander-in-chief, upon the recommendation of the surgeon-general.

7. Assignments of commissioned and non-commissioned officers and privates of the sanitary corps shall be made, and their duties prescribed by the commander-in-chief, upon the recommendation of the surgeon-general.

8. Privates of the sanitary corps shall do duty as cooks, nurses, and attendants in hospitals, and as stretcher-bearers and ambulance-drivers and attendants in the field, and such other duties as may be required of them by proper authority.

9. The pay and emoluments of members of the sanitary corps shall be the same as provided by law for the pay of troops of the National Guard; they shall be subject to detail by the surgeon-general.

10. The sanitary corps shall be equipped and uniformed the same as the same department in the United States army. The funds to be expended by this department shall be expended by the authority of the commander-in-chief, upon the recommendation of the surgeon-general. En. Stats. 1897, 417.

ARTICLE V.

PARADES AND DRILLS.

§ 2018. Parades, time of.
§ 2019. Public receptions and celebrations.
§ 2020. Companies parading with less than thirty-two members may be disbanded.
§ 2021. Exemptions from arrest.
§ 2022. Annual encampments; allowances.
§ 2023. Companies failing to report may be disbanded.
§ 2024. Cavalry drills.
§ 2025. Drill of regiment not concentrated.
§ 2026. Company drills, time of.
§ 2027. Uniforms and equipments.
§ 2028. Penalty for absence from company drills.
§ 2029. Book to be kept showing who was present at company drills.
§ 2030. Schools for instruction.
§ 2031. Target practice.
§ 2032. Cadets. (Repealed.)

§ 2018. Parades, time of. The National Guard of California must parade in each year as follows:

1. On the fourth of July;

2. For target practice at such times as may be designated by the commander-in-chief, and at least once in each year;

3. These parades shall be made by brigade, regiment, battalion, or company, as may be deemed most advisable by the commander-in-chief, who shall issue orders to the National Guard to carry out the provisions of this section. En. March 12, 1872. **Am'd.** 1877-8, 36; 1881, 32; 1885, 105; 1889, 430; 1897, 418.

Cal.Rep.Cit. 94, 539.

§ 2019. Public receptions and celebrations. Upon receptions, or upon the celebration of any event of public importance, the commanding officer of the brigade may order out any portion of the National Guard under his command to join in such parade. En. March 12, 1872.

§ 2020. Companies parading with less than thirty-two members may be disbanded. Any company parading at any of the parades or drills in this article provided for, with a less number than thirty-two, rank and file, must be reported to the adjutant-general, and by him notified to the commander-in-chief, who in his discretion may disband the same. En. March 12, 1872.

§ 2021. Exemptions from arrest. No person belonging to the military forces is subject to arrest, on civil process, while going to, remaining at, or returning from any place at which he may be required to attend for military duty. En. March 12, 1872. **Am'd.** 1877-8, 36.

§ 2022. Annual encampments; allowances. The commander-in-chief may annually order an encampment for discipline and drill, either by division, brigade, regiment, battalion, or unattached company, and all troops assembled and encamped, under orders of the commander-in-chief, for not less than seven days, shall receive a sum equal to one dollar and twenty-five cents per day for each officer and man regularly on duty in such camp; provided, that the aggregate for each company of such last-mentioned allowance of one dollar and twenty-five cents per day shall not exceed the sum of four hundred dollars

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per company; all officers and men shall receive, in addition to the above allowance, the actual fare to and from the place of encampment; and provided further, that when the division or a brigade is regularly assembled and encamped for discipline and drill for not less than seven days, then, in addition to the above allowance, the major-general, brigadier-general, the members of the staff of the commander-in-chief, and each staff officer on the general staff, shall receive from the state the sum of one dollar and twenty-five cents per day while regularly on duty in such camp; and provided further, that in any camp held in pursuance of orders from the commander-in-chief, all mounted officers and enlisted men shall receive the sum of two dollars per day for each horse necessarily used by them at such encampment; and provided further, that by all officers and enlisted men of companies of the naval battalion such services may be performed afloat. Aforesaid allowances shall be paid only when appropriations are made sufficient for that purpose. En. March 12, 1872. Am'd. 1880, 54; 1885, 105; 1887, 84; 1889, 430; 1891, 124; 1895, 187; 1897, 418.

§ 2023. Companies failing to report may be disbanded. Any company failing to report for duty at such assemblage must be reported to the adjutant-general, who must notify the same to the commander-in-chief, who may in his discretion disband it. En. March 12, 1872.

§ 2024. Cavalry drills. All mounted commands must drill mounted at least four times each year. En. March 12, 1872. Am'd. 1895, 188.

§ 2025. Drill of regiment not concentrated. When regiments are not concentrated, a portion of the companies may be assembled for battalion drill. En. March 12, 1872.

§ 2026. Company drills, time of. Each company must have at least three weekly drills each month, except in December of each year, when there need not be any drills. En. March 12, 1872. Am'd. 1885, 105; 1887, 85.

§ 2027. Uniforms and equipments. Companies, troops, and batteries already organized may wear uniforms and equipments now in use, until supplied by the state with the service uniform and equipments; after which no

uniforms and equipments other than those so supplied shall be worn, except that a dress uniform may be worn, as provided in section one thousand nine hundred and twenty-three of this code. No money of the state shall be used or applied to the purchase of the uniforms and equipments other than those in this section mentioned. All noncommissioned officers, musicians, and privates of a company, or of a general, brigade, regiment, or battalion staff, the members of the signal corps, and of the hospital and ambulance corps, and of regularly organized and enlisted bands (which bands shall not exceed in number twenty-five each) shall be furnished with service uniforms and equipments at the expense of the state. Such uniforms and equipments shall be issued to the division brigades, regiments, and companies, upon requisition, in such form as may be prescribed. The service uniform and equipments shall be issued to the several organizations of the National Guard upon requisition of the proper officer. The commanding officer of each organization shall be responsible for the keeping and return of all uniforms and other military property committed to his charge. Each commanding officer who shall receive uniforms and equipments or portions of uniforms or equipments for the use of his command, shall distribute the same to his command as he shall deem proper. The service uniform and equipments shall be furnished, as aforesaid, by a board which is hereby provided, to consist of three commissioned officers to be appointed by the commander-in-chief. This board is authorized and directed to purchase the cloth, arrange for its cutting, and also for its making, when required by the commander of any organization, and also to purchase equipments; and the bills of said board shall be audited, allowed, and paid as are other military demands. This board shall also fix the maximum price or cost of the making of each article of uniform, and shall permit, upon proper requisition of division, brigade, regiment, or unattached battalion or company, to draw the money instead of the cloth, or the cost of its making, or either, and provide itself with a corresponding number or articles of uniform; provided, that the bills therefor shall be audited, allowed, and paid as other military demands. En. March 12, 1872. Am'd. 1877-8, 41. Rep. 1885, 105. En. 1887, 85. Am'd. 1893, 107; 1895, 188.

§ 2028. Penalty for absence from company drills. All officers or members of the National Guard who absent themselves from three consecutive assemblages, without an excuse acceptable to the commanding officer, are debarred from the privileges and exemptions provided for members of the National Guard; and all non-commissioned officers or privates shall be reported by their commanding officer to the commanding officer of the regiment, or battalion, or unattached company, who shall forthwith court-martial such non-commissioned officer or private, and, upon conviction by such court-martial, the delinquent shall be dishonorably discharged from the service, and fined not less than five dollars nor more than fifty dollars. The proceedings of such court shall be subject to approval and review, as in other cases. En. March 12, 1872. Am'd. 1877-8, 36; 1881, 32; 1895, 188.

Delinquencies touching parades or encampments, how punished: Pen. Code, secs. 652, 653.

§ 2029. Book to be kept showing who was present at company drills. Commanders of companies must keep a book, in which must be entered the names and number of officers, non-commissioned officers, and privates respectively, present at each drill, and must therefrom make monthly returns to the commanding officer of the regiment or battalion, and if unattached, to the brigade commander, the excuses of absentees recorded, and marked approved or otherwise. These books must be carefully preserved, and, when filled, forwarded to the adjutant-general's office. En. March 12, 1872. Am'd. 1877-8, 37.

§ 2030. Schools for instruction. The commanding officer of any brigade, regiment, or battalion, may require the officers thereof to meet for military instruction at such times and places as he may fix, and may also prescribe the mode and manner of instruction and the rules and regulations to govern such meetings. En. March 12, 1872.

§ 2031. Target practice. The adjutant-general, the inspector-general of rifle practice, and the division inspector of rifle practice, shall have power to prescribe rules and regulations for target practice, which, after being approved by the commander-in-chief, shall govern all target practice

held under and by virtue of orders issued by the commander-in-chief. En. Stats. 1889, 431.

§ 2032. Cadets. (Repealed.) En. Stats. 1889, 431. Rep. 1901, 587.

CHAPTER III.

CALLING AND DRAFTING THE MILITIA INTO ACTUAL SERVICE.

§ 2039. Militia, when and by whom it may be called into actual service.
§ 2040. Same.
§ 2041. Call, how made.
§ 2042. Duty of officer to whom order is directed.
§ 2043. Same.
§ 2044. Same.
§ 2045. Organization of companies, etc., and election of officers.
§ 2046. Proclamation for election.
§ 2047. Commander-in-chief may assign volunteers.
§ 2048. Organization and command in active service.
§ 2049. When draft may be ordered.
§ 2050. Who to superintend draft.
§ 2051. Persons drafted to rendezvous.
§ 2052. Election of officers.
§ 2053. Refusing to rendezvous, penalty for.
§ 2054. Companies, how attached.
§ 2055. Drafted men may be enrolled in existing companies.
§ 2056. Substitutes.
§ 2057. Same.
§ 2058. Same.
§ 2059. Rules governing conduct of troops when called out to suppress insurrection, etc.
§ 2060. Duration of commissions of officers called into actual service.
§ 2061. Vacancies occurring in actual service, how filled.
§ 2062. Same.
§ 2063. Personal bravery in battle; appointment to fill vacancies.
§ 2064. Rules to govern militia when in actual service.
§ 2065. Pay of officers and privates when in actual service.
§ 2066. Pay of officers when detailed on special duty.

§ 2039. Militia, when and by whom it may be called into active service. In case of war, insurrection, or rebellion, or of resistance to the execution of the laws of this state, or upon the call or requisition of the president of the United States, or upon the call of any officer of the United States army commanding a division, department or district in California, or upon the call of any United States marshal in California, or of the chief executive officer of any city, or of any sheriff, the commander-in-chief is authorized to call into active service any portion of the National Guard or enrolled militia. En. March 12, 1872.

Governor may call out military: Const. Cal., art. VIII, sec. 1.

Resistance to execution of state laws, military force to suppress: Pen. Code, secs. 725, 728-733.

§ 2040. Same. In case of the absence of the commander-in-chief from the capital, or if it is impossible to immediately communicate with him, the civil or military officer making the requisition for troops may, if he deem the danger imminent, and not admitting of delay, serve a copy of such requisition, together with a statement of the commander-in-chief's absence, or the impossibility of immediately communicating with him, upon the division commander, or in his absence, upon the general commanding the brigade, who is authorized to exercise, with respect to calling out the troops of his division or brigade, the powers conferred in this section upon the commander-in-chief; but if the call is disapproved by the commander-in-chief, the troops so called into service must be immediately relieved from such tour of duty. Officers and men performing duty in response to any call as provided herein, shall, upon the proper rolls being approved by the board of military auditors, receive their pay therefor out of any money in the state treasury not otherwise appropriated, and the state controller is hereby directed to draw his warrant therefor, and the treasurer is hereby directed to pay the same. En. March 12, 1872. Am'd. 1895, 188.

§ 2041. Call, how made. Such call must be made by an order issued and directed to the commanding officer of the company, battalion, regiment, brigade, or division, which is called into service, designating the particular troops called, the time and place of rendezvous, and the officer to whom they must report. En. March 12, 1872.

§ 2042. Duty of officer to whom order is directed. If such order is directed to the major-general of division, it must be immediately communicated to the brigadier-generals, and by them to all the officers of their respective brigades. En. March 12, 1872.

§ 2043. Same. Every officer receiving such order must rendezvous and report for duty as herein directed; and every officer commanding an organized company or bat-

talion of the National Guard, on receiving such order, must immediately proceed to notify the same to each individual of his command, by personal notice or by publication in some newspaper, or by the posting in public places of the county or counties from which the call is made. En. March 12, 1872.

§ 2044. **Same.** Such officer must attend in person, or by deputing an officer of the organized militia in his place, at the place of rendezvous, and take the names of all volunteers for service under such call. En. March 12, 1872.

§ 2045. **Organization of companies, etc., and election of officers.** If the number of such volunteers is sufficient to form one or more companies or battalions, he must immediately call and superintend the election of the officers of such companies or battalions. En. March 12, 1872.

§ 2046. **Proclamation for election.** A proclamation of the call of such election, made by the officer calling it, at the place of rendezvous, is a sufficient notice. En. March 12, 1872.

§ 2047. **Commander-in-chief may assign volunteers.** The commander-in-chief has authority, if he deem it expedient, to direct that a portion of the volunteers so presenting themselves be assigned to companies or battalions already in active service, whose numbers are less than the full complement. En. March 12, 1872.

§ 2048. **Organization and command in active service.** Where troops are called into active service from the different brigades or regiments, and the number so called are not more than sufficient to constitute one complete regiment, the commander-in-chief must so organize them, and must designate the particular officer to command it; or he may make such other organization of said troops as he may deem proper, and designate the officer to command. En. March 12, 1872. Am'd. 1895, 189.

§ 2049. **When draft may be ordered.** If the number of volunteers presenting themselves at the place of rendezvous is insufficient to satisfy the call of the commander-in-chief, the brigadier-general of the brigade in which such call is made must promptly proceed to draft from the

enrolled militia of his brigade a sufficient number of men to satisfy the call, and this draft must be made by putting the names of all the enrolled militia of the county or counties from which the order directs the forces to be raised into a box, and drawing therefrom a sufficient number of names to satisfy the call. En. March 12, 1872.

§ 2050. Who to superintend draft. The major-general must be present and superintend the drafting of the enrolled militia under any call by the commander-in-chief; but his presence is not necessary to give validity to the proceedings. In case of the absence or inability of the brigadier-general, the officer next in rank of the brigade, or, in default of any officer of that brigade for duty, the major-general, or, in his default, the commander-in-chief must designate some other officer to perform that duty. En. March 12, 1872.

§ 2051. Persons drafted to rendezvous. The persons drafted must be summoned by some officer appointed for that purpose by the brigadier-general, in the manner prescribed by law for the summoning of witnesses in civil cases, the time and place of rendezvous, as ordered by the brigadier-general being stated in the summons. En. March 12, 1872.

§ 2052. Election of officers. As soon as a sufficient number of drafted men have appeared at the rendezvous to form a company or companies, they must proceed to the election of their company officers. En. March 12, 1872.

§ 2053. Refusing to rendezvous, penalty for. Any member of the National Guard who neglects or refuses to rendezvous when ordered out by the commander-in-chief, is guilty of disobedience of orders, and may be tried and punished by a court-martial; and any member of the enrolled militia who refuses or neglects to rendezvous when drafted, is subject to a penalty of not less than fifty nor more than three hundred dollars, to be recovered by an action brought by the district attorney, in the name of the people of the state, upon the certificate of the officer appointed to make the draft, before any court of competent jurisdiction in the county from which such person was drafted, and the fine recovered must be paid into the

state treasury to the credit of the general fund. En. March 12, 1872.

§ 2054. Companies, how attached. Any company of the enrolled militia drafted and organized, may, by direction of the commander-in-chief, be enrolled and mustered into any battalion of the National Guard having less than eight companies. En. March 12, 1872.

§ 2055. Drafted men may be enrolled in existing companies. Drafted men of the enrolled militia not organized into companies, may, at the discretion of the commander-in-chief, be enrolled and mustered into any existing company of the National Guard or enrolled militia not having the full number authorized by law, and which has already been called into active service. En. March 12, 1872.

§ 2056. Substitutes. Any person called or drafted into service may furnish as a substitute any person fit for military duty who has not been called or drafted into service. En. March 12, 1872.

§ 2057. Same. When any person drafted for service offers, at or after the time of rendezvous, a suitable substitute, and such substitute consents in writing to subject himself to all the duties, fines, forfeitures, and punishments to which his principal would have been subject had he personally served, he must be accepted by the officer making such draft. En. March 12, 1872.

§ 2058. Same. The person whose substitute is so accepted is not subject to draft during the term of service of the substitute. En. March 12, 1872.

§ 2059. Rules governing conduct of troops when called out to suppress insurrection, etc. The conduct of troops when called out to suppress an insurrection or rebellion, to disperse a mob, or enforce the laws, is provided for in section 731 of the Penal Code. En. March 12, 1872.

§ 2060. Duration of commissions of officers called into actual service. The commission of any officer called into active service continues until he is discharged by the order of the commander-in-chief. En. March 12, 1872.

§ 2061. Vacancies occurring in actual service, how filled. All vacancies of officers and non-commissioned offi-

cers in active service must be filled by appointment or promotion; the first by the commander-in-chief, and the second by the commanding officer of the battalion or of the company, in case such company forms no part of any battalion. En. March 12, 1872.

§ 2062. Same. In filling vacancies of commissioned officers the commander-in-chief must, as a general rule, promote by seniority, or appoint on the recommendation of their superior officers those in active service, and in any case of departure from this rule, the commander-in-chief must report his reasons for such departure to the senate. En. March 12, 1872.

§ 2063. Personal bravery in battle; appointment to fill vacancies. The commanding officer of troops in active service may nominate to any vacancy for personal bravery or service in siege or battle, and if the governor commission some other person than the one so nominated, he must report his reasons to the senate; and if the senate in either of the foregoing cases disapprove of the reasons given, the commission so given is vacated, and the governor must immediately proceed, with the advice and consent of the senate, to fill such vacancy. En. March 12, 1872.

§ 2064. Rules to govern militia when in actual service. The rules and regulations established by congress for the government of the army of the United States are applicable to and govern the militia of this state when in active service. En. March 12, 1872.

§ 2065. Pay of officers and privates when in actual service. Officers and privates while on active duty in the service of the state shall receive the same pay and allowance as the officers and privates in the United States army, of similar grade, serving on the Pacific Coast; provided, that said pay shall not be less than two dollars per day, the same to be audited by the board of military auditors, upon the pay-roll properly made up and signed by such officers; and provided further, that no pay shall be allowed to any officer or private when on duty in any camp mentioned in section two thousand and twenty of this act. En. March 12, 1872. **Am'd.** 1889, 431; 1891, 125.

§ 2066. Pay of officers when detailed on special duty. When an officer is detailed for special duty in any matter relating to the National Guard or care of state military property, by order of the commander-in-chief, division, brigade, regimental, or battalion commander, he must be allowed pay, proper and such reasonable traveling expenses as the board of military auditors may allow upon sworn vouchers showing actual expenditures. All officers shall be allowed such reasonable traveling expenses incurred while discharging military duties as the board of military auditors may allow upon sworn vouchers showing actual expenditures. En. March 12, 1872. Am'd. 1889, 431.

CHAPTER IV.

COURTS-MARTIAL AND OF INQUIRY.

§ 2076. Who may appoint courts-martial.
§ 2077. Organization and rules.
§ 2078. Powers.
§ 2079. Revision and approval of sentence.
§ 2080. Fines, how collected.
§ 2081. No action in certain cases against members of courts-martial.
§ 2082. Who may order courts of inquiry.
§ 2083. Rules governing.
§ 2084. Sheriffs and constables must serve subpœnas, etc.
§ 2085. Penalty for disobedience.
§ 2086. Penalty for refusing to pay over moneys.
§ 2087. Fines and penalties, various offenses.

§ 2076. Who may appoint courts-martial. The following officers may appoint courts-martial:

1. The commander-in-chief for the trial of all officers of the National Guard and naval militia, of retired officers and all officers of the staff of the commander-in-chief.

2. The major-general for the trial of all officers and enlisted men of the National Guard, except retired officers and officers of the staff of the commander-in-chief.

3. Brigadier-generals for the trial of all officers and soldiers in their respective brigades, except field officers.

4. The commanding officers of regiments, of the naval militia, and of unattached battalions, for the trial of all warrant officers and enlisted men in their respective commands. For the trial of enlisted men of regiments or battalions, the commanding officer thereof may at any time appoint a summary court-martial, to consist of one of-

ficer whose rank is not below that of a captain, if in the National Guard, or if in naval militia that of lieutenant. For the trial of enlisted men of unattached companies, troops, or batteries, the brigade commander may, at any time, appoint a summary court-martial, to consist of a first lieutenant. En. March 12, 1872. Am'd. 1877-8, 37; 1895, 189; 1897, 418; 1901, 587.

§ 2077. **Organization and rules.** Courts-martial appointed under the provisions of this chapter are organized in like manner, and subject to the laws, rules, and regulations and articles of war governing courts-martial in the United States army and navy, and have the same power and authority as such courts-martial, so far as the same may be applicable and not inconsistent with the laws of this state. They have the same power to compel the attendance of witnesses when summoned by them, to preserve order in and about the court-room during sessions, and to punish for contempt, as the judges of the superior court have under the laws of this state. En. March 12, 1872. Am'd. 1880, 55; 1901, 587.

§ 2078. **Powers.** Courts-martial have power, on conviction, to punish by expulsion or dismissal, or by depriving officers of their rank, or by such other and usual military fines and penalties as are customary in the army of the United States; provided, that they shall not have the power to punish by imprisonment for more than five days, except in time of war, insurrection, or rebellion; such judgment of imprisonment, when it becomes final, must be executed by the sheriff of the county in which said court held its session, and the judgment of such court, when certified by its president, shall be a sufficient warrant to said sheriff to arrest and detain the defendant for the period of time named in the judgment, not exceeding five days. En. March 12, 1872. Am'd. 1889, 431.

§ 2079. **Revision and approval of sentence.** The officer appointing a court-martial must revise the proceedings and approve or disapprove the sentence of such court-martial, and must direct the execution of such sentence, or mitigate the punishment, or may remit the sentence of the person convicted; but the person so sentenced may apply to the commander-in-chief to revise the pro-

ceedings and to disapprove them or pardon the offense, in which case the officer approving the sentence will transmit the proceedings in the case to the commander-in-chief, and the execution of the sentence must be suspended until the proceedings are returned with the decision thereon. En. March 12, 1872.

§ 2080. **Fines, how collected.** For the purpose of collecting fines or penalties imposed by courts-martial, the president of any such court must make a list of all such fines and penalties, and of the persons against whom they have been imposed, and must, within fifteen days after the fines and penalties have been imposed, issue a warrant under his hand, directed to any sheriff or constable of the county, commanding him to levy and collect such fines, together with costs, upon and out of any property of the person against whom the fine or penalty was imposed, and such warrant may be executed and renewed in the same manner as executions issued from justice's courts are executed and renewed. All property except the homestead is subject to execution and forced sale under such warrant. En. March 12, 1872.

§ 2081. **No action in certain cases against members of courts-martial.** No action can be maintained against any member of a court-martial, or officer, or agent acting under his authority, on account of an imposition of a fine, or the execution of a sentence, on a person not liable to military duty, if such person has been summoned and notified in writing of the charges preferred against him, and has failed to appear and show his exemption before the court. En. March 12, 1872.

§ 2082. **Who may order courts of inquiry.** Courts of inquiry may be ordered by the commander-in-chief, by the major-general, or by any brigadier-general. En. March 12, 1872.

§ 2083. **Rules governing.** Courts of inquiry are governed by the same rules as similar courts in the army of the United States. They shall have the same power to compel the attendance of witnesses when summoned by them, to preserve order in and about the court-room during sessions, and to punish for contempt, as judges of the

superior court have under the laws of this state. En. March 12, 1872. Am'd. 1895, 190.

§ 2084. Sheriffs and constables must serve subpœnas, etc. Every sheriff and constable must serve all orders, subpœnas, or process delivered to him for that purpose by any member of a court-martial or court of inquiry, and shall receive for such service the same fees, in the same manner, and account for the same, as provided by law in criminal cases. En. March 12, 1872. Am'd. 1897, 420.

§ 2085. Penalty for disobedience. In time of peace every commissioned officer, for disobedience of orders, neglect, or ignorance of duty, unofficerlike conduct, or disrespect to a superior officer, or for neglecting to comply with any of the requirements of this chapter, shall be arrested and brought to trial before a court-martial, which may, on conviction, sentence him to be cashiered, incapacitated from holding any military commission, fined to an amount not exceeding one hundred dollars, or reprimanded, or may sentence him to all or either of such fines and penalties, in their discretion. En. Stats. 1877-8, 38.

§ 2086. Penalty for refusing to pay over moneys. Every commissioned officer refusing to pay over moneys in his hands, which came into his possession by virtue of his position as an officer of the National Guard, shall be liable to be tried and cashiered, or otherwise punished therefor, by a court-martial. En. Stats. 1877-8, 38.

§ 2087. Fines and penalties, various offenses. Every commissioned officer, and every enlisted man shall, on due conviction, be subject for the following offenses to the fines and penalties thereto annexed:

1. Every commissioned officer, for non-attendance at any parade or encampment, and every such officer or enlisted man neglecting or refusing to obey the orders of his superior officers on any day of parade or encampment, or to perform such military duty or exercise as may be required, or departing from his colors, post, or guard, or leaving his place or ranks without permission, a fine not more than one hundred nor less than five dollars.

2. Every enlisted man, for non-appearance when duly warned or summoned at a troop, battery, or company drill

or parade, a fine of two dollars for each offense, and in case of a troop parading mounted, a fine of six dollars for each officer; at a regimental or battalion parade, not less than three nor more than six dollars for each offense, and at a place of rendezvous, when called into actual service in case of war, insurrection, or invasion, or imminent danger thereof, a sum not exceeding twelve months' pay nor less than one month's pay; and for disobedience of orders or disrespectful or insubordinate conduct, a fine not exceeding fifty dollars; and also in the discretion of the court, the offender shall be liable to dishonorable discharge from the command to which he belongs.

3. Every commissioned officer, or non-commissioned officer, for neglecting or refusing to obey any order or warrant to him lawfully given or directed, or to make a proper return, or neglecting or refusing, when required, to summon a delinquent before a court-martial, or duly to return such summons, a fine of not more than one hundred nor less than five dollars. En. Stats. 1877-8, 38.

CHAPTER V.

THE BOARD OF MILITARY AUDITORS.

§ 2093. Who constitute the board.
§ 2094. Allowance and payment of company expenses.
§ 2095. Same.
§ 2096. Other duties of the board.
§ 2097. Duties of controller and treasurer.
§ 2098. Claims exempted from board of examiners.
§ 2099. Allowance to companies.
§ 2100. Military property of state.
§ 2101. Medals. (Repealed.)
§ 2102-2104. No section of these numbers.
§ 2105. Allowance for signal corps.

§ 2093. Who constitute the board. The commander-in-chief, adjutant-general, and the attorney-general, constitute a board of military auditors. The commander-in-chief is president, and the adjutant-general is secretary; and the board must have a seal which must be attached to all accounts audited by them; and said board is authorized to withhold any demand or allowance when it appears to them that the claim therefor is incorrect, unjust, or fraudulent, until such time as proper and satisfactory vouchers for all moneys expended and included in the claim shall be produced. En. March 12, 1872. Am'd. 1885, 105.

§ 2094. Allowance and payment of company expenses. There must be audited and allowed by the board of military auditors, and paid out of the appropriation for military purposes, upon the warrant of the state controller, to the commanding officer of each infantry or artillery company of the National Guard, the sum of one hundred dollars per month; to the commanding officer of each light battery having not less than four guns, with which they regularly drill and parade, and to the commanding officer of each troop of cavalry, the sum of two hundred dollars per month; and to the commanding officer of each division of the naval militia the sum of one hundred dollars per month; the sum so paid to be used for armory rent, care of arms, and proper incidental expenses of the company. There must also be audited, allowed, and paid out of the same appropriation, to the commanding officer of each regiment or battalion, the sum of six dollars per month for each company in his command, for clerical expenses, stationery, printing, postage, and proper incidental expenses; and if the regiment or battalion has more than four companies, and has attached to it an organized and uniformed band of not less than twenty people, the additional sum of thirty-five dollars per month for such band; to the major-general, twelve hundred dollars per annum; to the brigadier-general of each brigade, five dollars per month for each company in his brigade, and to each company a sum necessary for uniforms and to keep the same in repair, not to exceed one hundred and fifty dollars per annum; and to the adjutant-general, eight thousand dollars per annum, to be expended by him in promoting rifle practice. There must be audited and allowed by the board of military auditors, and paid out of the appropriation for military purposes, to the surgeon in charge of each detachment of the sanitary corps on duty with a regiment, and to the chief surgeon of the naval militia, the sum of fifty dollars per month, for rent and proper incidental expenses of such detachment. Demands shall be made and presented in the same manner as for the expenses of a company of the National Guard. En. March 12, 1872. **Am'd.** 1875-6, 30; 1877-8, 40; 1880, 57; 1885, 106; 1887, 86; 1891, 125; 1893, 108; 1895, 191; 1897, 420; 1901, 588.

§ 2095. Same. No claim shall be allowed under the provisions of the preceding section, except upon demands

made quarterly, in duplicate, signed and sworn to by the officer claiming the same, before any field officer of the National Guard or notary public, and transmitted through the regular military channels, with the approval of each commanding officer through whose headquarters they are required to pass; provided, that demands for uniforms and promoting rifle practice may be made at any time. One copy of said demands shall be filed in the office of the adjutant-general, and one copy sent to the board of military auditors. En. March 12, 1872. Am'd. 1877-8, 39; 1880, 55; 1891, 125.

§ 2096. **Other duties of the board.** The board of military auditors must audit and allow all proper claims against the military fund incurred by troops in the service of this state, and officers attached to the same. En. March 12, 1872.

§ 2097. **Duties of controller and treasurer.** The controller of state must draw his warrants for any amount audited and allowed by the board, and the treasurer of state must pay the same out of the appropriation for military purposes. En. March 12, 1872. Am'd. 1877-8, 39.

§ 2098. **Claims exempted from board of examiners.** Claims audited and allowed by the board of military auditors are exempt from the provisions of article XVIII of chapter III, part III of this code. En. March 12, 1872.

See ante, sec. 654.

§ 2099. **Allowance to companies.** The annual sum of two hundred and fifty dollars must be audited by the board, and paid out of the appropriation for military purposes, to each company of the National Guard of fifty members or over, and an amount in proportion to every company of less than fifty members. The amount so audited and allowed must be paid to the commanding officers of such companies for the use thereof. En. March 12, 1872. Am'd. 1875-6, 31; 1877-8, 39; 1880, 55; 1891, 126; 1897, 421.

§ 2100. **Military property of state.** All military property paid for out of moneys allowed by the state shall be held to be the property of the state, and must be enumerated in the annual muster roll next following its purchase. En. Stats. 1877-8, 41.

§ 2101. Medals. (Repealed.) En. Stats. 1889, 432. Rep. 1897, 421.

§§ 2102, 2103, 2104. [No sections of these numbers.]

§ 2105. Allowance for signal corps. There must be audited and allowed by the board of military auditors, and paid out of the appropriations for military purposes, to the commanding officer of each signal corps in the National Guard, the sum of three dollars per month for each member of said corps, the sum so paid to be used for armory rents, care of arms, and proper incidental expenses of the signal corps; provided, that no allowance shall be made for more than forty men to any one signal corps. Demand shall be made and presented in the same manner as for the expenses of a company. En. Stats. 1889, 432. Am'd. 1897, 421.

CHAPTER VI.

ADJUTANT-GENERAL.

§ 2107. General duties of adjutant-general.
§ 2108. Report of.
§ 2109. Acts ex-officio as what officers.
§ 2110. Assistant adjutant-general.
§ 2111. Transportation of arms, etc.
§ 2112. Salary of armorer. (Repealed.)
§ 2113. Salary of adjutant-general.
§ 2114. Salary of assistant adjutant-general.
§ 2115. Salaries, when and out of what fund payable.
§ 2116. Official bond.
§ 2117. Title in force, etc.

§ 2107. General duties of adjutant-general. It is the duty of the adjutant-general:

1. To keep and preserve the arms, accouterments, ammunition, and other military property belonging to the state;

2. To keep on file in his office all returns and reports made to him;

3. To keep an account, in a manner directed by the commander-in-chief, of all moneys received or disbursed by him;

4. To cause so much of the militia laws as shall be in force to be printed and bound in proper form and distributed, one copy to each commissioned officer, supervisor's clerk, and county assessor in the state, and also to

prepare and cause to be furnished to the National Guard, at the expense of the state, all necessary blank books, blank forms, and notices to carry into full effect the provisions of this section; and the controller is hereby directed to draw his warrant on the treasurer of the state for the expenses incurred under this section, after having the approval of the board of military auditors.

5. To attest all commissions issued to military officers;

6. To authenticate with his official seal all papers issued from his office;

7. To make out and transmit the annual militia returns prescribed by the act of congress of March second, eighteen hundred and three;

8. To perform such other duties as are required by the provisions of this title. En. March 12, 1872. Am'd. 1875-6, 31; 1877-8, 40.

Amendment of 1878, above given, attempts to amend portion of section (subd. 4), without re-enacting whole section and publishing it at length; hence validity of change is doubtful.

§ 2108. **Report of.** He must report to the governor a statement:

1. Of all moneys received or disbursed by him since his preceding report;

2. An account of all arms, accouterments, ammunition, and military property belonging to the state, from what source received, and to whom issued;

3. Of the present condition of all such property under his charge;

4. The number and condition of the National Guard and of the enrolled militia of the state. En. March 12, 1872.

§ 2109. **Acts ex-officio as what officers.** He is ex-officio chief of staff, quartermaster-general, commissary-general, inspector-general, and chief of ordnance. En. March 12, 1872.

§ 2110. **Assistant adjutant-general.** There shall be an assistant adjutant-general of California, who shall rank as colonel on the staff of the governor and commander-in-chief. He shall be appointed by the adjutant-general, and hold office at his pleasure. En. March 12, 1872. Am'd. 1881, 32.

§ 2111. Transportation of arms, etc. The transportation of arms, equipments, and military stores issued to troops, or received by the state, and all other military transportation, must be contracted for by the adjutant-general, under the direction of the commander-in-chief, and vouchers for such transportation, when audited by the state board of military auditors, must be paid from the appropriation for military purposes, on the warrant of the controller. En. March 12, 1872. Am'd. 1877-8, 40.

§ 2112. Salary of armorer. (Repealed.) En. March 12, 1872. Rep. 1875-6, 31.

§ 2113. Salary of adjutant-general. The annual salary of the adjutant-general is three thousand dollars. En. March 12, 1872.

§ 2114. Salary of assistant adjutant-general. The annual salary of the assistant adjutant-general of the state of California is the same as the salary paid to deputies for other state officers, namely, two thousand four hundred dollars. En. March 12, 1872. Am'd. 1877-8, 5; 1889, 174.

§ 2115. Salaries, when and out of what fund payable. The salaries provided for in this chapter are payable monthly out of the general fund in the state treasury. En. March 12, 1872.

§ 2116. Official bond. The adjutant-general must execute an official bond in the sum of twenty-five thousand dollars. En. March 12, 1872.

Official bonds: Ante, secs. 947-987.

§ 2117. Title in force, etc. The provisions of this title shall be in force and effect from and after the first day of May, eighteen hundred and seventy-two. The adjutant-general is hereby directed to have prepared and printed for the use of the National Guard of the state, whenever in his judgment it may be deemed necessary, the laws and regulations authorized by section one thousand nine hundred and forty-one of the Political Code. After distributing a sufficient number to the officers of the National Guard, the remaining copies may be sold to members of companies and regiments, and to all others who may desire to purchase the same. The price of copies sold shall not exceed one dollar. The money thus received shall be paid by the

adjutant-general into the state treasury at the end of each month. The moneys thus received by the state treasury shall be placed to the credit of the general fund. The number of copies authorized by this section shall not exceed three thousand (3,000) in any one year. En. March 12, 1872. Am'd. 1881, 33.

Part 3

TITLE V.

PUBLIC INSTITUTIONS.

Chapter I. State Commission in Lunacy, State Hospitals, and Care, Custody, Apprehension, Commitment of Insane and other Incompetent Persons, §§ 2136-2199.
II. Deaf, Dumb, and Blind Asylum, §§ 2237-2282.
III. State Library, §§ 2292-2305.
IV. Supreme Court Library, §§ 2313-2316.
V. Other Public Institutions, §§ 2326-2328.

CHAPTER I.

STATE COMMISSION IN LUNACY, STATE HOSPITALS, AND CARE, CUSTODY, APPREHENSION, COMMITMENT OF INSANE AND OTHER INCOMPETENT PERSONS.

§ 2136. Commission in lunacy—of whom consists.
§ 2137. The superintendent, his appointment, qualification, and salary.
§ 2138. Office and meetings of the commission.
§ 2139. The seal of the commission.
§ 2140. Expenses and salary of commission.
§ 2141. Powers of commission.
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§ 2172. Execution of the order of commitment.
§ 2173. Right to refuse to receive person committed.
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§ 2175. Costs of proceedings.
§ 2175a. Limitations with respect to imbecile persons.
§ 2176. Liability of relatives and guardians of insane persons.
§ 2177. Insane persons in care of their relatives or guardians. Duty of the commission.
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§ 2184. Homœopathic treatment.
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§ 2187. Transfer of patients.
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§ 2190. Clothing of discharged patients.
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§ 2191. Return of insane persons to other state or country.
§ 2192. Commitments of incompetents other than insane persons.
§ 2193. Moneys received from counties for support of incompetents.
§ 2194. Admissions of incompetents by agreement.
§ 2195. Terms of life tenure.
§ 2196. Private hospitals.
§ 2197. Actions by commission.
§ 2198. Interpretation.
§ 2199. Reservations.
§ 2200-2222. (Repealed.)

§ 2136. Commission in lunacy—of whom consists. There shall continue to be a state commission in lunacy consisting of five members, to wit: The general superintendent of the state hospitals, the secretary of the state board of health, and the three members of the state board of examiners. In the absence of the governor, at any meeting of the commission, the secretary of the state board of examiners is authorized to act in his place, with the same powers and with like effect as the governor might exercise, if present;

and in the like absence of the attorney-general, the assistant attorney-general may act in his place, with like authority as he might exercise, if present. All the members, other than the general superintendent, must serve without salary. En. March 12, 1872. Rep. 1903, 485. En. Stats. 1903, 486.

§ 2137. **The superintendent, his appointment, qualification, and salary.** The general superintendent of state hospitals is appointed by the governor, to hold office for four years, and must not hold any other office. He must be a reputable physician, and graduate of an incorporated medical college, who has had at least ten years' actual practice in his profession, and six years' actual experience in the care and treatment of the insane, at least one year of which must have been in the state hospitals of this state. His salary is four thousand dollars per annum, and cannot be changed during his term of office, and he must also be allowed his actual traveling and incidental expenses, to be audited by the other members of the commission. En. March 12, 1872. Am'd. 1883, 288; 1889, 177. Rep. 1903, 485. En. 1903, 487.

Cal.Rep.Cit. 89, 603.

§ 2138. **Office and meetings of the commission.** The secretary of state must provide the commission with a suitably furnished office in the state capitol, in which it must hold stated meetings at least once in every three months. It may hold other meetings at such office, or elsewhere, at such times as it may be deemed necessary. En. March 12, 1872. Rep. 1903, 485. En. 1903, 487.

§ 2139. **The seal of the commission.** The commission must have and keep an official seal. Every process, order, or other paper issued or executed by the commission, may, by its direction, be attested with its seal by the secretary, or by any member of the commission, and when so attested must be deemed to be duly executed by the commission. En. March 12, 1872. Rep. 1903, 485. En. 1903, 487.

2140. **Expenses and salary of commission.** The salary of the general superintendent and the reasonable expenses of the commission, and of the necessary clerical assistance, must be paid by the treasurer of state on the warrant of the controller, out of any money appropriated for the

support of the insane, feeble-minded and other incompetent persons, pro rata, from the amount appropriated for the maintenance of each hospital. En. March 12, 1872. Am'd. 1877-8, 45. Rep. 1903, 485. En. 1903, 487.

§ 2141. Powers of commission. The commission has power:

1. To employ a secretary, a stenographer, and such other employees as it may deem necessary and fix their compensations.

2. To appoint, by its order, a competent person to examine the books, papers, and accounts, and also into the general condition and management of any institution in this chapter mentioned, to the extent deemed necessary and specified in such order;

3. To fix the annual salaries of the resident officers and treasurer of the state hospitals, which must be uniform in all state hospitals for the insane and as near uniform as possible in all state hospitals, and to classify the other officers and employees in grades, and determine the salaries and wages to be paid in each grade, which must be uniform in all hospitals for the insane, and as near uniform as possible in all state hospitals.

4. To determine the kind and character of all employees who shall be employed at any state hospital according to the needs and objects of the hospital. En. Stats. 1903, 487.

§ 2142. Duties of commission. The duties of the commission are:

1. To take charge of the execution of the laws relating to the care, custody, and treatment of the insane, feeble-minded persons, epileptics and idiots, and other incompetent persons as provided in this chapter;

2. To examine all public and private institutions receiving and caring for the insane and other incompetent persons, and inquire into their methods of government, and the treatment of all inmates thereof;

3. To examine into the condition of all buildings, grounds, or other property connected with such institutions, and into all matters relating to their management. For the purposes specified in this subdivision, each commissioner is entitled to free access to the grounds, buildings, and all books and papers relating to any such institution,

and every person connected therewith must give such information and afford such facilities for any such examination or inquiry, as the commissioners may require;

4. To make such regulations in regard to the correspondence of the inmates in said institutions in custody as in its judgment will promote their interests, which regulations must be complied with and enforced by the proper authorities of each institution; but no restriction must be placed upon the correspondence of such inmates with the superior judge and district attorney of the county from which they were committed or admitted to such institutions;

5. To adopt, for all hospitals, rules and regulations, books of record for steward's and all departments, blank forms, both clinical and otherwise, questions for examination of employees, and for examination in all the different branches of medicine and surgery, and especially in diseases affecting the mind and nervous system, of all officers and internes, for the special use of the hospital;

6. To keep in its office a record showing the name, residence, and certificate of each duly qualified medical examiner, and to immediately file, when received, each duly certified copy of a medical examiner's certificate, and advise him of its receipt and filing;

7. To keep in its office a record showing:

(1) The name, residence, sex, age, nativity, occupation, civil condition, and date of commitment of every patient and inmate in custody in the several institutions for the care and treatment of insane and other incompetent persons in the state, and the name and residence of the person making the petition for commitment, and of the persons signing the medical certificate, and of the judge making the order of commitment;

(2) The name of the institution where each patient or inmate is confined, the date of admission, and whether brought from home or another institution, and if from another institution, the name of such institution, by whom brought, and the patient's or inmate's condition;

(3) The date of the discharge of each patient or inmate from such institution, and whether recovered, improved, or unimproved, and to whose care committed;

(4) If transferred, for what cause, and to what institution; and if dead, the date and cause of death;

(5) The date of discharge of each inmate from the home for feeble-minded since July 1, 1902, and mental condition when discharged;

8. To report and recommend to the legislature the necessary prospective needs for the care, custody, and treatment of the poor and indigent insane and other incompetent persons mentioned in this chapter, and for the purpose of preventing overcrowding, it must recommend to the legislature the establishment of cottages at such of the state hospitals as in its judgment will best meet the requirements of such persons.

9. To furnish the legislature an estimate of the probable number of patients who will become inmates of the respective state hospitals during the two years beginning July first, next ensuing, and the cost of all additional buildings and equipments, if any, which will be required to carry out the provisions of this chapter relating to the care, custody, and treatment of the poor and indigent insane and other incompetents of the state;

10. To biennially report to the legislature its acts and proceedings for the two years ending June thirtieth, last preceding, with such facts regarding the management of the institutions for the insane and other incompetents as it deems necessary for the information of the legislature, including estimates of the amounts required for the use of such hospitals and the reasons therefor; and also the annual reports made to the commission by the board of managers of each state hospital. En. Stats. 1903, 487.

§ 2142a. Special investigations by commission. When the commission has reason to believe that any person held in custody as insane or incompetent is wrongfully deprived of his liberty, or is cruelly or negligently treated, or inadequate provision is made for his skillful medical care, proper supervision, and safekeeping, it may ascertain the facts, or may order an investigation of the facts by one or all of its members. It, or the commissioner conducting the proceeding, may issue compulsory process for the attendance of witnesses and the production of papers, and exercise the powers conferred upon a referee in a superior court. The commission may make such orders for the care and treatment of such person as it may deem proper. Whenever the commission undertakes an investigation

into the general management and administration of any hospital for the insane or incompetents or places of detention for the alleged insane or incompetents, it may give notice to the attorney-general of any such investigation, who must appear personally or by deputy, and examine witnesses who may be in attendance. The commission, or any member thereof, may at any time visit and examine the inmates of any county, city and county, or city almshouse, to ascertain if insane persons are kept therein. When complaint is made to the commission regarding the officers of any hospital or institution for the insane or other incompetents, or regarding the management thereof or of any person detained therein or regarding any person held in custody as insane or incompetent, the commission may, before making an examination regarding such complaint, require the same to be made in writing and sworn to before an officer authorized to administer oaths, and on receiving such complaint, sworn to if required by the commission, the commission shall direct that copy of such complaint be served on the authorities of the hospital or institution or the person against whom complaint is made together with notice of time and place of such investigation as the commission may direct. En. Stats. 1903, 489.

§ 2143. **Visits, examinations, and reports.** The general superintendent of state hospitals must visit every state hospital at least twice in each year. Visits may be made by the commissioners jointly, or singly, at such times as the visiting commissioner or commissioners may choose. Each visit must include, to the fullest extent deemed necessary, an inspection of every part of each institution, and all the outhouses, places, buildings, and grounds belonging thereto, or used in connection therewith. The general superintendent, or a majority of the members of the commission, must, from time to time, make an examination of all records and methods of administration, the general and special dietary, the stores and methods of supplies, and, as far as the circumstances will permit, of every patient confined therein, especially those admitted since the preceding visit, giving such as may require it, suitable opportunity to converse with the commissioners, apart from the officers and attendants. They must, as far as they deem necessary, examine the officers, attendants,

and other employees, and make such inquiries as will determine their fitness for their respective duties. At the next regular or special meeting of the commission, after any such visit, the visiting commissioner, or commissioners, must report the result thereof, with such recommendations for the better management or improvement in such institutions as they may deem necessary. But such recommendations must not be contrary to the medical doctrines of the particular school of medicine adopted by such institution. The commissioners must, from time to time, meet the managers or responsible authorities of such institutions, or as many of the members as practicable, in conference, and consider, in detail, all questions of management and improvement of the institutions, and must also send to them, in writing, if approved by a majority of the commissioners, such recommendations in regard to the management and improvement of the institutions as they may deem necessary or desirable. The times and places of such conferences shall be designated by the commission. En. Stats. 1903, 490.

§ 2144. Information to be furnished to the commission. The authorities for the several hospitals must furnish to the commission the facts mentioned in subdivision seven of section twenty-one hundred and forty-two and such other obtainable facts as the commission may, from time to time, in the discharge of its duties, require of them, with the opinion of the superintendent thereon, if requested. The superintendent or other person in charge of a hospital must, within ten days after the admission of any person thereto, cause a copy of the medical certificate and order on which such person was received to be forwarded to the office of the commission, and when a patient or inmate is discharged, transferred, or dies, such superintendent, or person in charge, must, within three days thereafter, send the information to the office of the commission, in accordance with the forms prescribed by it. En. Stats. 1903, 490.

§ 2145. State hospitals. There are established the following state hospitals, which are declared to be corporations:

1. The Stockton state hospital at the city of Stockton,

formerly known as the Stockton state insane asylum at Stockton;

2. Napa state hospital, near the city of Napa, hitherto known as the Napa state asylum for the insane at Napa;

3. Agnews state hospital, near the city of San Jose, formerly known as the state insane asylum at Agnews;

4. Mendocino state hospital, near the city of Ukiah, hitherto known as the Mendocino state insane asylum at Ukiah;

5. Southern California state hospital, near the city of San Bernardino, hiherto known as the southern California state insane asylum for the insane and inebriates, San Bernardino.

Said state hospitals being for the care and treatment of the insane.

6. The California home for the care and training of feeble-minded children at Eldridge, Sonoma County.

The object of said home is such care, training, and education of those received, as will render them more comfortable and happy and better fitted to care for and support themselves. To this end the managers must furnish them such agricultural and mechanical education as they may be capable of receiving and all that the facilities offered by the state will allow, including farm work, shops, and the employment of trade teachers. The hospital must, on the conditions in this act prescribed, receive and care for feeble-minded persons, imbeciles, idiots, and epileptics who are not insane. En. Stats. 1903, 490.

§ 2146. The property of the hospitals. Each of the corporations mentioned in the preceding section may acquire and hold in its corporate name, by gift, devise, or bequest, property to be applied to the maintenance of the inmates of the hospitals and for the general use of the corporation. All lands necessary for the use of state hospitals must be acquired by condemnation as lands for other public uses are acquired, except those acquired by gift, devise, or purchase, and the terms of every purchase must be approved by the commission. No public street or road for railway or other purposes, except for hospital use, must be opened through the lands of any state hospital, unless the legislature by special enactment consents thereto. En. Stats. 1903, 491.

§ 2147. Managers of the state hospitals, and their appointment. Each hospital has a board of five managers or trustees appointed by the governor, each of whom holds office for the term of four years from and after his appointment, and the terms of not more than two must expire in any one year. Such trustees or managers shall hereafter be termed managers. If a vacancy occurs otherwise than by the expiration of a term, it must be filled by appointment for the unexpired term. Any manager is subject to removal by the governor, upon good cause shown and opportunity to be heard. The managers or trustees of each hospital now in office shall continue in office during the terms for which they were appointed. En. Stats. 1903, 491.

§ 2148. Managers, eligibility of, and causes of forfeiture of office. No person is eligible to the office of manager, who is a member of the legislature or an elective state officer, and if he becomes such after his appointment his office is thereby vacated. If any manager fails for three months to attend the regular meetings of the board, unless he is ill or absent from the state, his office becomes vacant, and the board, by resolution, must so declare, and must forthwith transmit a certified copy of such resolution to the governor. En. Stats. 1903, 491.

§ 2149. Managers' compensation. The managers are entitled to ten dollars per day for their attendance at meetings of the board, and while in the actual service of the state, and to their necessary traveling expenses, to be paid as are other current expenses of the hospital; provided, that no manager shall receive more than two hundred and forty dollars, exclusive of traveling expenses, in any one year. En. Stats. 1903, 492.

§ 2150. Powers and duties of the managers. Subject to the powers of the commission, each board of managers has general control and direction of the property and concerns of the institution for which it is appointed, not otherwise provided by law. It is the duty of the board of managers:

1. To take care of the interests of the hospital, and see that its design and its by-laws, rules, and regulations are carried into effect, according to law;

2. To establish such by-laws, rules, and regulations sub-

ject to the approval of the commission, as it may deem necessary and expedient for regulating the duties of officers and employees of the hospital, and for the internal government, discipline, and management of the same;

3. To maintain an effective inspection of the hospital, for which purpose a majority of the board must visit the hospital at least every month, and the whole board once a year, and at such other times as may be prescribed in the by-laws;

4. To keep, in a book provided for the purpose, a fair and full record of its doings, which must at all times be open to the inspection of the commissioners in lunacy, or either house of the legislature;

5. To cause, within ten days after each meeting of such managers, or a committee thereof, a copy of the minutes and proceedings of such meeting to be sent to each member of such board and to the commission;

6. To enter, in a book kept by them for that purpose, the date of each of their visits, and the condition of the hospital and patients, and all the managers present must sign such entry;

7. To make to the commission, on or before the fifteenth day of August of each year, a detailed report of their visits and inspections, with suitable suggestions and such other matters as may be required of them by the commission, for the year ending on the thirtieth day of June preceding the date of such report.

8. To bring such actions in the name of the hospital with the consent of the attorney-general necessary to protect the interests of the hospital or to recover for the use of the hospital the amount due the hospital on any bond, note or other cause of action accruing to the hospital other than for the care, support, maintenance and expense of any patient or inmate therein. En. March 12, 1872. Rep. 1903, 485. En. 1903, 492.

§ 2151. Limitation upon the powers of managers. No money must be expended by the managers of any state hospital for the erection of additional buildings or for unusual repairs or improvements, except upon plans and specifications approved by the commission. The cost of such buildings to be occupied by patients, or inmates, including the necessary equipment for heating, lighting,

ventilating, fixtures, and furniture, must in no case exceed five hundred and fifty dollars per capita for the patients or inmates to be accommodated therein; and subject to the said approval, the managers may employ a competent architect to prepare plans, specifications, or estimates of cost of proposed structures, and adopt such plans, specifications, or estimates, and after plans, specifications, or estimates of cost are so approved, may let contracts for erection of such buildings or making of such repairs, and may employ a competent architect to superintend the construction of such building or the making of such repairs. En. March 12, 1872. Rep. 1903, 485. En. 1903, 492.

Cal.Rep.Cit. 136, 583; 136, 584.

§ 2152. Appointments by the managers. Each board of managers must appoint for the hospital under its control, as often as vacancies may occur therein:

1. A medical superintendent, who must be a graduate of an incorporated medical college, and a well-educated physician, of good moral character, who has had not less than three years' experience in the care and treatment of the insane. The medical superintendent of the homœopathic hospital must be a homœopathic physician, and he must, in other respects, possess the same qualifications as other medical superintendents;

2. A treasurer, who is also ex-officio secretary of the board, and who must keep all the books, records, and papers pertaining to the business of his office, and maintain such office wherever the board of managers directs. He must give an undertaking to the people of the state, in such sum as the board requires for the faithful performance of his trust, with sureties to be approved by it.

Any medical superintendent or treasurer may be removed by a majority vote of the board of managers for cause; such cause must be stated in writing and served upon the official charged. He must thereafter be given an opportunity to be heard. If removed upon such hearing, his removal is final.

3. The appointment of any person as medical superintendent shall not be effective for any purpose unless such person has passed, or shall pass, an examination touching his qualifications in all the different branches of medicine and surgery and especially in diseases affecting the mind and nervous system. The questions for such examination

shall be prepared by the general superintendent and such medical superintendents as may be designated by the commission subject to the approval of the commission. Such examination shall be conducted by the general superintendent or by such medical superintendents of the hospitals as may be named by the commission for that purpose. An examination shall not be required of any medical superintendent or assistant physicians now in office in any state hospital. En. March 12, 1872. Rep. 1903, 485. En. 1903, 493.

§ 2153. The medical superintendent and his duties. The medical superintendent of each hospital is its chief executive officer. In his absence or sickness the first assistant physician, or other officer designated by the medical superintendent, must perform his duties and be subject to his responsibilities. Subject to the rules and regulations established by the board of managers, the medical superintendent has general superintendence of all buildings, grounds, and farm, together with their furniture, fixtures, and stock, and the direction and control of all persons therein, and must:

1. Personally maintain an effective supervision and inspection of all parts of the hospital, and generally direct the care and treatment of the patients and inmates. To this end the superintendent must personally examine the condition of each patient or inmate within five days after his admission to the hospital, and must visit all the wards or apartments for patients or inmates at such times as the rules and regulations of the hospital prescribe;

2. The superintendent of the home for feeble-minded must, on or before the fifth day of each month, prepare a true and correct report, verified by oath, of all inmates supported, cared for, trained, and educated in such hospital for the preceding month, and whose support, care, training, and education in such hospital are provided to be paid for by the several counties whence they came. This report must give the names and residences of all such inmates, together with the dates of their admission, and the department of the hospital in which they are detained, and the special grade of mental deficiency with which each is afflicted. Copies of this report must be filed in the offices of the state board of examiners, the controller, the treasurer of state, and state commission in lunacy, but must not be printed, or used, nor permitted to be used, for

any other purpose than the special information of the officers designated. The superintendent must also, within the time above designated, prepare a report, verified by his oath, showing substantially the facts set forth in the above report, which must be filed with the county auditors of the several counties from which the commitments have been made to the institution, showing the name of each inmate supported, and for which such county is liable to the state for support and maintenance.

3. The superintendent of the home for feeble-minded must, annually, after the close of the fiscal year, and before the date at which the managers are required to make their annual report, make to the managers a report, giving the name, age, sex, nativity, residence, and date of reception of each pupil in the institution within the preceding year, and, as far as can be ascertained, the causes of imbecility; also the number discharged, with the date and reason therefor in each case, together with the name of each paying pupil, and the amount charged for him, and the amounts paid or unpaid; and also such other information and suggestions as may seem proper; which report must be kept on file in the office of the secretary of the board, but must not be printed. En. March 12, 1872. Rep. 1903, 485. En. Stats. 1903, 493.

§ 2153a. Appointees of the medical superintendents. 1905-85- The medical superintendent of each hospital must appoint, by and with the consent of the board of managers:

1. A supervisor, matron, and steward, and all employees, none of whom must be his relatives, or that of any member of the board of managers, either by consanguinity or marriage, who shall be subject to such examination as he deems for the best interest of the hospital, the questions to be prepared by the general superintendent, subject to the approval of the commission;

2. Such assistant physicians and internes as may be determined by the commission. Such assistant physicians and internes must be graduates of incorporated medical colleges, well educated in their profession and of good moral character;

3. Where there are first and second assistant physicians, the first assistant physician must have had two years' actual experience, and the second assistant physician one

year's actual experience in the care and treatment of the insane;

4. Where there are four or more assistant physicians in any hospital for the insane one of them must be a woman;

5. No appointment of any person as first, second, or other assistant physician or interne shall be effective for any purpose unless such person shall pass or has passed an examination touching his qualifications for such position in all the different branches of medicine and surgery, and especially of diseases affecting the mind and nervous system. Such examination shall be conducted by the medical superintendent on questions prepared by the general superintendent and by such medical superintendents as may be designated by the commission, subject to the approval of the commission. The passing of an examination for a given position in any state hospital shall qualify any person for a similar position in any other state hospital;

6. At the homœopathic state hospital all assistant physicians and internes besides possessing the qualifications herein prescribed, must be graduates of an incorporated homœopathic medical college;

7. The medical superintendent must: Give such orders and instructions as he may deem best calculated to insure good conduct, fidelity, and economy in every department of labor and expenses;

8. Maintain salutary discipline among all who are employed in the institution, and enforce strict compliance with his instructions and uniform obedience to all rules and regulations of the hospital;

9. Cause full and fair accounts and records of the entire business and operation of the hospital to be kept regularly, from day to day, in books or forms provided for that purpose;

10. See that all such accounts and records are fully up to the last day of June in each year, and that the principal facts and results, with his report thereon, are presented to the managers within thirty days thereafter, who must incorporate them in their report to the commission;

11. Keep a book, in which he must cause to be entered at the time of reception of any patient, his name, residence, and occupation, and the date of such reception, by whom brought and by what authority, and on whose petition com-

mitted, and an abstract of all orders, warrants, requests, petitions, certificates, and other papers accompanying such person;

12. To prepare and keep the pay rolls of the hospital, and collect all moneys; keep the accounts for the support of the patients, and expenses incurred in their behalf; furnish the treasurer statements thereof as they fall due; turn all moneys collected over to the treasurer, and report same to the board of managers at each meeting; notify the treasurer of the death or discharge of reimbursing or pay patients, within five days after such death or discharge;

13. Prepare triplicate estimates of the amount, kind, and quality of furniture and household furnishing goods, provisions, fuel, forage, clothing or material for clothing, and other material required for the twelve months ending June thirtieth of each year, which must be approved by the board of managers, unless a different time is allowed by the commission. He must submit two of the triplicate estimates to the commission, and file the third in his office. The commission may revise the estimate for supplies, either as to quality or quantity thereof, and must certify that it has carefully examined the same, and that the articles contained in such estimate, as approved by it, are actually required for the use of the hospital; whereupon, after having approved the estimates, the commission must, beginning upon the fifteenth day of the month preceding the month in which contracts are to be let, advertise for four successive weeks, for contracts for furnishing said supplies; said advertising being in brief, referring to the class of supplies and the fact that all contemplated bidders can receive schedules by applying to the superintendents or secretaries of the various hospitals, or the state commission. All contracts must be awarded to the lowest responsible bidder, or bidders, upon their giving to the board of managers a bond, amounting to one fourth of their actual bids, as security for the faithful performance of the same. The board of managers reserves the right to reject any and all bids submitted to them;

14. Prepare monthly triplicate estimates, as approved by the board of managers, two of which must be submitted to the commission, and the other filed in the superin-

tendent's office, for necessary expenditures required for the hospital of which he is superintendent, for the ensuing month. The commission may revise these estimates for supplies, either as to quality, quantity, or price thereof, and must certify that they have been carefully examined, and that the articles contained in such estimates, as approved by it, are actually required for the use of the hospital; whereupon the board of managers must direct its superintendent to secure the supplies according to the approved estimates. En. Stats. 1903, 494.

§ 2154. **Salaries.** The annual salary of the medical superintendent must not exceed thirty-five hundred dollars, of the first assistant physician three thousand dollars, of other assistant physicians twenty-five hundred dollars, and of internes six hundred dollars. All salaries and wages must be included in the monthly estimates and paid in the same manner as other expenses of the state hospitals. The medical superintendents, the assistant physicians, and stewards, and their families, must be furnished room, household furniture, laundry service, drugs when ill, provisions, fuel, and lights at and from the supplies of the hospital. But separate accounts must be kept of the same. The word family shall be regarded as meaning only the wife and minor children of said officers. En. March 12, 1872. **Rep.** 1903, 485. En. Stats. 1903, 496.

§ 2155. **Removals.** The medical superintendent may remove any resident officer in his employ for cause, pending the meeting of the board of managers. The removal of employees, other than resident officers, must be reported to the board of managers for its action, which is final; and in the case of resident officers, notice in writing must be immediately given to the resident officer removed and to each member of the board of managers. At the next meeting of the board, or at the meeting to which it is regularly postponed, such removal must be considered and the person removed be heard; after which the managers must determine the matter, and their judgment is final. If an officer or employee is removed, the superintendent must make a record thereof, with the reasons therefor, under the appropriate head, in one of the books of the hospital. Any officer or employee of a state hos-

pital taking an active part in politics, directly or indirectly, may be summarily removed from such hospital by the state commission in lunacy upon written charges under oath made by three or more reputable citizens and upon testimony taken under oath at a hearing held for the purpose. The medical superintendent must transmit, by mail, to the state lunacy commission, within five days after any removal has been approved by the board of managers, information of such removal, and the cause thereof. The commission must preserve the name of such officer, or employee, with the facts relating to his removal in a book provided for that purpose. When any officer or employee is removed by the superintendent, as herein provided, the officer or employee removed shall stand suspended from his office or position until the removal is acted upon by the board of managers; and no salary or wages shall be paid such officer or employee for the time he remains suspended. During such suspension, the duties of the office or position shall be performed by such other officer or employee who may be designated for that purpose by the medical superintendent. En. March 12, 1872. Rep. 1903, 485. En. 1903, 497.

§ 2156. Resident officers. The medical superintendent, all assistant physicians, stewards, supervisors, and matrons must maintain their residence in the hospital or on the premises, and are designated as the resident officers of the hospital. En. Stats. 1903, 497.

§ 2157. Restrictions on physicians and medical superintendents. The medical superintendents and assistant physicians shall not engage in private practice, but shall devote their entire time to the duties of their positions. Nothing in this section shall, however, be regarded as prohibiting them from giving necessary medical care and treatment to the officers and employees of the hospital residing at the hospital or in the immediate vicinity thereof, or in cases of emergency. En. Stats. 1903, 497.

§ 2158. Contingent fund, how used. In every state hospital there shall be a contingent fund. In state hospitals for the insane said fund shall consist of all moneys received by the board of managers other than that appropriated by the state. In the home for feeble-minded such

fund shall consist of all moneys received by the board of managers other than that appropriated by the state or received by them from the several counties of the state for the support of inmates actually in the hospital. The contingent fund must by said board, be expended for such supplies, expenses, buildings, lands and other property and improvements as are required for the best interests of the hospital and for the improvement thereof and of the grounds and buildings connected therewith. The medical superintendent must make triplicate estimates, in minute detail, as approved by the board of managers, of such supplies, expenses, buildings, and improvements which must be submitted to the commission. The commission may revise the estimates of such supplies, expenses, buildings, and improvements, and must certify that it has carefully examined the same, and that the supplies, expenses, buildings, and improvements contained in such estimates, as approved by it, are required for the best interests of such hospital; whereupon the board of managers, after having received the revised and approved estimates, must proceed to purchase such supplies, make such expenditures, or construct such improvements or buildings without further authority, itemized bills for the same to be approved by the board of managers and paid in the same manner as other bills incurred by the hospital. The building act of eighteen hundred and seventy-six does not apply to any improvement, structure, or building made under the provisions of this act. The commission may also require the board of managers to obtain such plans and specifications for buildings or improvements as it deems advisable and may also require the board of managers, before letting contracts for supplies, buildings and improvements, to advertise for bids for the same for a period and in such papers as the commission deems proper. En. Stats. 1903, 497.

§ 2159. **Duties of the treasurer.** The treasurer of each hospital must:

1. Subject to the provisions of chapter XCIII, statutes of 1899, approved March 17, 1899, have the custody of all moneys received from the state, or elsewhere, for the benefit of the hospital, or any of its inmates, and keep an accurate account thereof;

2. Have the custody of all bonds, notes, mortgages,

and other securities and obligations belonging to the hospital;

3. Receive all money for the care and treatment of patients, and other sources of revenue to the hospital;

4. Subject to the provisions of chapter XCIII, statutes of 1899, approved March 17, 1899, deposit all such moneys in a bank designated by the board of managers, conveniently near the hospital, in his name, as treasurer, and send each month, to the commission and the board of managers, a statement showing the amount so received and deposited, and from whom and for what received, and when such deposits were made. Such statement of deposit must be certified by the proper officer of the bank receiving such deposit. The treasurer must make an affidavit to the effect that sum so deposited is all the money received by him, from any source of hospital income, up to the time of the last deposit appearing on such statement;

5. Pay out the money deposited for the uses of the state hospital, upon the voucher of the steward, approved by the superintendent, in accordance with the estimates made by the superintendent, and revised and approved by the board of managers and by the commission;

6. Keep full and accurate accounts of all receipts and payments, in the manner directed in the by-laws, and according to the books and forms approved, prescribed and furnished by the commission;

7. Balance all accounts on his books annually, on the last day of June, and make a statement thereof, and an abstract of the receipts and payments of the past year, and deliver the same, within ten days, to the finance committee of the managers, who must compare the same with the books and vouchers, and verify the results by further comparison with the books of the steward, and certify, in regard to the correctness thereof, to the managers at their next meeting;

8. Render an account to the state of the books and the funds and other property in his custody, whenever required by the managers or by the commission;

9. Upon the order of the board of managers, execute a release and satisfaction of a mortgage, judgment, or other lien or debt, in favor of the hospital, when the same has been paid.

10. Upon the order of the board of managers to pay all moneys and return all property in his possession belonging to any patient to said patient or to the persons entitled thereto, when said patient is discharged. Upon the order of the board of managers, when any patient dies, to pay over all moneys and turn over all property in his possession belonging to such patient to the persons entitled thereto. En. Stats. 1903, 498.

§ 2160. Financial statements. The treasurer of each state hospital shall, each month, send to the commission an audit sheet showing the payment of claims allowed by the board of examiners for the preceding month for the expenses of the hospital. Such audit sheet must show the number of each voucher, the name of the claimant, to whom paid, number of check, date of payment and amount for which it was allowed by the state board of examiners. Such audit sheet must be verified by the affidavit of the treasurer attached thereto, in the following form:

"I, ———, treasurer of the ——— state hospital, do solemnly swear that I have deposited in the bank designated by the board of managers for such purpose, all the moneys received by me, as hereinbefore set forth, on account of the hospital for the preceding month, and I do further swear that the foregoing is a true abstract of all the moneys received, as hereinbefore mentioned, and payments made by me, or under my direction, as such treasurer, for the month ending on the ——— day of ———, 19—."

There must also be attached the affidavit of the steward, to the effect that the goods and other articles therein specified were ordered, or purchased, and received by him, or under his direction, at the hospital, and that neither he, nor any person in his behalf, had any pecuniary or other interest in the articles purchased; that he received no pecuniary or other benefit therefrom in the way of commission, percentage, deduction, or presents, or in any manner whatever, directly or indirectly; that the articles and bills conform in all respects to the invoiced goods received and ordered by him, both in quality and in quantity. En. Stats. 1903, 499.

§ 2161. The steward, and his powers and duties. The steward, under the direction of the superintendent, shall

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be accountable for the careful keeping and economical use of all furniture, and, under the direction of the superintendent, shall make all purchases for the hospital according to the provisions of subdivisions thirteen and fourteen of section twenty-one hundred and fifty-three *a* and section twenty-one hundred and fifty-eight, receive the same, and preserve the original bills and receipts therefor, and keep full and accurate accounts of all such proceedings. The steward at all times shall, under the direction of the medical superintendent, have control of the farm, stock, grounds and all outside departments. He shall receive all supplies and see that they are the articles ordered and of proper weight and quality, reject those that are below the standard adopted. He shall exercise general supervision over the kitchen and all food supplies and see that they are properly cooked and served. He shall receive all products of farm and garden, and keep true and accurate books and accounts of such products and all supplies and materials under his supervision. En. Stats. 1903, 500.

§ 2162. Purchase of supplies. No expenditure for supplies, or other purposes, must be made by the board of managers of any state hospital for the benefit of such hospital, by contract or otherwise, unless in conformity with the provisions of this chapter, in relation to estimates. No manager or officer of the hospital must be interested, directly or indirectly, in the furnishing of material, labor, or supplies for the use of the hospital, nor must any manager or officer act as an attorney or counsel for such hospital. En. Stats. 1903, 500.

§ 2163. Manufactures at the state hospitals. The state hospitals may make or manufacture such supplies and materials necessary or required to be used in any of the state hospitals and which can be economically made or manufactured therein. The necessary cost and expense of providing for the making and manufacture of such supplies and materials and to conduct and carry on the same shall be paid for out of the contingent funds of the hospitals. In making proper provision for the making and manufacture of such supplies and materials, the board of managers and the officers and employees of the hospitals shall be governed by the provisions of this act relating

to the contingent fund of each state hospital. The board of managers may agree with the board of managers of other state hospitals on what terms, supplies or materials, made or manufactured at state hospitals, may be sold to or exchanged for supplies or materials manufactured by other state hospitals. No hospital shall enter into or engage in making or manufacturing any supplies or materials unless permission for the same is obtained from the commission. Such permission must be by resolution of the commission duly passed and entered of record on the minutes of the commission. The commission may, at any time, when, in the judgment of the commission, it shall appear that the manufacture of any article or articles is not being or cannot be economically carried on at a state hospital, suspend or stop the manufacture of such article or articles, and on receipt of a certified copy of the order of the commission directing the suspension or stopping of such manufacture, by the medical superintendent, the hospital shall cease from manufacturing such article or articles. En. Stats. 1903, 500.

§ 2164. Oaths of office. Each superintendent, treasurer, and steward, before entering upon his duties as such, must take the constitutional oath of office, and file the same in the office of the secretary of state. En. Stats. 1903, 501.

§ 2165. Inventories by medical superintendents. During the month of June of each year the medical superintendent shall make a complete and accurate inventory in minute detail of the stock and supplies on hand at said hospital. Said inventory shall be under the following heads: Livestock; farm produce on hand; wagons, carriages and other vehicles; agricultural and farming implements; tools and machinery; other tools, implements, machinery and mechanical appliances and fixtures; real estate; beds and bedding; carpets and furniture in patients' apartments; beds, bedding, carpets and furniture in apartments used by officers and employees and purchased by the state; personal property of the state in all departments; ready-made clothing; cloths, materials and dry goods purchased for clothing and hospital purposes; groceries and provisions; drugs and medicines; fuel on hand; stationery and office supplies; hardware;

lumber and building materials; and all other property under such heads as the medical superintendent shall deem proper. Said inventory shall cover the fiscal year ending June 30th, of each year. One copy of such inventory shall be forwarded to the commission on or before the first day of July of each year. One copy shall be filed with the board of managers, and one copy retained by the superintendent. En. March 12, 1872. Rep. 1903, 485. En. Stats. 1903, 501.

§ 2165a. Prohibition of actions. No civil action must be brought against the commission, or a commissioner in lunacy, or an officer or manager of a state hospital, because of any act done or failure to perform any act, while discharging his official duties, without leave of the controller first had and obtained. Any just claim for damages against such commission or commissioner, officer or employee, for which the state would be legally or equitably liable, may be paid out of any moneys appropriated for the care of the insane or other incompetents. En. Stats. 1903, 501.

§ 2166. Recommendations, and their filing. The authorities of each state hospital must place on file in the office of the institution, the recommendations made by the commissioners, as a result of their visit, for the purpose of consultation by such authorities, and for reference by the commissioners upon their visit to such institution. En. March 12, 1872. Rep. 1903, 485. En. 1903, 501.

§ 2167. Detention hospitals. The board of supervisors of each county, and city and county, must maintain in the county, or city and county, or in a receiving hospital situate therein, a suitable room or rooms for the detention, board, care, and treatment of the alleged insane, for a period of not less than one nor more than twenty days. These rooms and their furnishings must be subject to the approval of the commission, and each person having charge and control of any such hospital or rooms and their furnishings, must allow the commission to make such investigations thereof as it may at any time deem necessary. Nothing in this section must be construed to mean that insane persons may not be detained, cared for, boarded, and treated, by and with the consent of the commission,

in their own homes, or homes of their relatives or friends, or in a licensed private hospital. En. March 12, 1872. Rep. 1903, 485. En. 1903, 502.

§ 2167a. **Medical examiners.** The superior judge of each county, or city and county, may grant certificates in accordance with the form prescribed by the commission, showing that the persons named therein are reputable physicians and graduates of incorporated medical colleges, and have been in active practice of their profession at least five years, and when certified copies of such certificates have been filed with the commission, the persons therein named become known as "medical examiners," and there must at all times be at least two such medical examiners in each county. En. Stats. 1903, 502.

§ 2168. **Charges of insanity, and proceedings thereon.** Whenever it appears by affidavit to the satisfaction of a magistrate of a county, or city and county, that any person therein is so far disordered in his mind as to endanger health, person, or property, he must issue and deliver to some peace officer, for service, a warrant directing that such person be arrested and taken before a judge of the superior court of the county, for a hearing and examination on such charge. Such officer must thereupon arrest and detain such person until a hearing and examination can be had, as hereinafter provided. At the time of the arrest a copy of said affidavit and warrant of arrest must be personally delivered to said person. He must be taken before a judge of the superior court, to whom said affidavit and warrant of arrest must be delivered to be filed with the clerk. The judge must then inform him that he is charged with being insane, and inform him of his rights to make a defense to such charge and produce any witnesses in relation thereto. The judge must by order fix such time and place for the hearing and examination in open court as will give reasonable opportunity for the production and examination of witnesses. Said order must be entered in the minutes of the court by the clerk and a certified copy of the same served on such person. The judge may also order that notice of the arrest of such person and of the hearing on the said charge of insanity be served on such relatives of said person known to be residing in the county, as the court may deem necessary

or proper. En. March 12, 1872. Rep. 1903, 485. En. Stats. 1903, 502.

§ 2169. **Attendance and examination of witnesses.** The superior judge may, for any hearing, issue subpœnas and compel the attendance of witnesses and must compel the attendance of at least two medical examiners, who must hear the testimony of all witnesses, make a personal examination of the alleged insane person, and testify before the judge as to the result of such examination, and to any other pertinent facts within their knowledge. The judge must also cause to be examined before him as a witness, any other person whom he has reason to believe has any knowledge of the mental condition of the alleged insane person or of his financial condition or that of the persons liable for his maintenance. The alleged insane person must be present at the hearing, and if he has no attorney, the judge may appoint an attorney to represent him. En. March 12, 1872. Rep. 1903, 485. En. Stats. 1903, 502.

§ 2170. **Certificate of examiners.** If the medical examiners, after making the examination and hearing the testimony, believe such person to be dangerously insane, they must make a certificate, under their hand, showing as nearly as possible:

1. That such person is so far disordered in his mind as to endanger health, person, or property;

2. The premonitory symptoms, apparent cause or class of insanity, the duration and condition of the disease;

3. The nativity, age, residence, occupation, and previous habits of the person;

4. The place whence the person came and the length of his residence in the state.

Such certificates must be made in the form prescribed by, and, if they can be had, upon blanks furnished by the general superintendent of the state hospitals. En. Stats. 1903, 503.

§ 2171. **Order of commitment.** The judge, after such examination and certificate made, if he believes the person so far disordered in his mind as to endanger health, person, or property, must adjudge him insane, and make an order that he be confined in a hospital for the care

and treatment of the insane, designated in such order, and the order must be accompanied by a written statement of the judge as to the financial condition of the insane person and of the persons legally liable for his maintenance, as far as can be ascertained. Copies of such order, of the certificate of the examiners and of such accompanying statement must be filed with the county clerk, and said order must be recorded by the county clerk of the county in which such order was made as are other judgments of said court. He shall also keep, in convenient form, an index book, showing the name, age, and sex of the person so ordered to be confined in any such hospital, with the date of the order and the name of the hospital in which the person is ordered to be confined. No fees must be charged by the clerk for performing any of the duties provided for in this section. En. Stats. 1903, 503.

§ 2172. Execution of the order of commitment. The insane person, together with certified copies of the affidavit, warrant of arrest, and of the order for hearing and examination, the order and accompanying statement of the judge and the certificate of the physicians, must be delivered to the sheriff of the county, and by him must be delivered to the officer in charge of the hospital to which such person is committed; but no female insane person shall be taken to any hospital without the attendance of some other female or of some relative of such insane person. En. Stats. 1903, 503.

§ 2173. Right to refuse to receive person committed. The superintendent or person in charge of any state hospital may refuse to receive any person upon any order, if the papers presented do not comply with the provisions of the preceding section. En. Stats. 1903, 504.

§ 2174. Jury trial. If a person ordered to be committed, or any friend in his behalf, is dissatisfied with the order of the judge committing him, he may, within five days after the making of such order, demand that the question of his sanity be tried by a jury before the superior court of the county in which he was committed. Thereupon that court must cause a jury to be summoned and to be in attendance at a date stated, not less than

five nor more than ten days from the date of the demand for a jury trial. At such trial the cause against the alleged insane must be represented by the district attorney of the county, and the trial must be had as provided by law for the trial of civil causes before a jury, and the alleged insane person must be discharged unless a verdict that he is insane is found by at least three fourths of the jury. If the verdict of the jury is that he is insane, the judge must adjudge that fact and make an order of commitment as upon the original hearing. Such order must be presented, at the time of commitment of such insane person, to the superintendent or person in charge of the hospital to which the insane person is committed, and a copy thereof be forwarded by such superintendent to the commission, and filed in its office. Proceedings under the order must not be stayed, pending the proceedings for determining the question of sanity by a jury, except upon the order of a superior judge, with provision made therein for such temporary care and custody of the alleged insane person as may be deemed necessary. If the superior judge, by the order granting the stay, commits the accused insane to the custody of any person other than a peace officer, he may, by such order, require a bond for his appearance at the trial. If a judge refuses to grant an application for an order of commitment of an insane person alleged to be dangerous to himself and others if at large, he must state his reasons for such refusal, and any person aggrieved thereby may demand a trial of the question of the insanity of such accused insane, in the manner hereinbefore provided for a jury trial when demanded by or on behalf of the accused insane. En. Stats. 1903, 504.

§ 2175. Costs of proceedings. The cost necessarily incurred in determining the insanity of a poor or indigent person and securing his admission into a state hospital, and the expense of providing proper clothing for him in accordance with the rules and regulations adopted by the commission, is a charge upon the county, or city and county, whence he is committed. Such costs include the fees of the medical examiners allowed by the judge ordering the commitment. If the person sought to be committed is not a poor or indigent person, the costs of the proceedings are a charge upon his estate, or must be

paid by persons legally liable for his maintenance, unless otherwise ordered by the judge. If the alleged insane person is adjudged not to be insane, the judge may, in his discretion, charge the costs of the proceedings to the person making the application for an order of commitment, and judgment may be entered against him for the amount thereof and enforced by execution. En. Stats. 1903, 504.

§ 2175a. Limitations with respect to imbecile persons. No case of idiocy, imbecility, epilepsy, harmless chronic mental unsoundness, feeble-mindedness or acute mania a potu, as such, shall be committed to or confined in any state hospital for the care and treatment of the insane; provided, when any such person becomes insane he may be committed to a state hospital for the insane as in this act provided. En. Stats. 1903, 505.

§ 2176. Liability of relatives and guardians of insane persons. The husband, wife, father, mother, or children of an insane person, if of sufficient ability, and the guardian of his estate, if it is sufficient for the purpose, must cause him to be properly and suitably cared for and maintained, and must pay the costs and charges of his commitment and transportation to a state hospital for the insane. The husband, wife, father, mother, or children of an insane person, if of sufficient ability, or the estate of such insane person to the extent it is sufficient for the purpose shall be liable for the care, support and maintenance of any insane person in a state hospital for the insane to which he has been or may hereafter be committed or transferred. En. Stats. 1903, 505.

§ 2177. Insane persons in care of their relatives or guardians. Duty of the commission. The commission may inquire into the manner in which any insane person, not confined in a state hospital, is cared for and maintained; and if, in its judgment, he is not properly and suitably cared for, it may apply to a judge of the superior court for an order to commit him to a hospital under the provisions of this act. Such order must not be made unless the judge finds, and certifies in the order, that the insane person is not properly or suitably cared for by his relatives or guardian, or that it is dangerous to the

public to allow him to be cared for and maintained by such relatives or guardian. En. Stats. 1903, 505.

§ 2178. Duties of district attorneys. The district attorney in each county in which an order of commitment is made must, on the filing of a copy of such order with the county clerk, make diligent inquiry into the ability of the person committed to pay the charges and costs of his maintenance and care while in a state hospital, and must notify the secretary of the commission of the result of such inquiry. En. Stats. 1903, 505.

§ 2179. Appointment of guardian. In case any person who has been or shall hereafter be committed to any state hospital for the insane, shall be or shall hereafter become the owner of any property, real or personal, the secretary of the state commission in lunacy, in case such insane person has no guardian, may apply to a court of competent jurisdiction for the appointment of a guardian of the estate of such insane person. In such application the district attorney of the county may act as attorney for such secretary. En. March 12, 1872. Rep. 1903, 485. En. 1903, 505.

§ 2180. Fixing amount to be paid for support. The monthly rate for the care, support, maintenance and clothing of all insane patients at state hospitals for the insane, where there is liability to pay for such care, support, maintenance and clothing, shall be fifteen dollars per month payable in advance; provided, however, the medical superintendent of a state hospital for the insane shall, on the order of the commission, reduce or remit the amount to be paid by the state or the relatives, as the case may be, liable for the care, support, maintenance and clothing of any insane person committed thereto and confined therein, on satisfactory proof that said estate or said relatives, as the case may be, are unable to pay the said sum of fifteen dollars per month. If any insane person die at any time, while his estate is liable for his care, support, maintenance and necessary clothing and other expenses at a state hospital, the claim for such amount as may be due, may be presented to the executor or administrator of his estate and paid in the same manner as are other debts and claims against the estate of a

deceased person. En. March 12, 1872. Rep. 1903, 485. En. 1903, 505.

§ 2181. **Orders to be made for payments by guardians.** If said insane person has sufficient estate for the purpose, it shall be the duty of the guardian of his estate to pay for his care, support, maintenance and necessary expenses at the hospital to the extent of the estate. Payment for said care, support, maintenance and expenses may be enforced by the order of the judge of the superior court where said guardianship proceedings are pending. On the filing of a petition therein by the secretary of the commission, showing that said guardian has failed, refused or neglected to pay for said care, support, maintenance and expenses, the court, by order, shall direct the payment by the guardian. Such order may be enforced in the same manner as are other orders of the court. If there is not at any time sufficient money on hand in the estate of said insane person to pay the claim of a state hospital for the care, support, maintenance and expenses of said insane person therein, the court may, on petition of the guardian of the estate, or if said guardian fails, refuses or neglects to apply, on the petition of the secretary of the commission, make an order directing the guardian to sell so much of the other personal or real estate or both, of said insane person as may be necessary to pay for the care, support, maintenance, clothing and expenses of said insane person at said hospital. From the proceeds of such sale the guardian shall pay the amount due for the care, support, maintenance, and expenses at said hospital, and also such other charges as are allowed by law. Provided, however, payment for the care, support, maintenance, clothing and expenses of any insane person at a state hospital shall not be exacted when such payment will, in any case, where there is a likelihood of such insane person recovering or being released from said hospital, reduce his estate to that extent, in the event of his discharge from the hospital, he is likely to become a burden on the community. En. March 12, 1872. Rep. 1903, 485. En. Stats. 1903, 506.

§ 2182. **Suits against relatives.** If the insane person has no estate out of which payment of the amount fixed by section 2180 can be enforced, then his relatives made

liable by section 2176 may be compelled to pay such amount by actions against them, or any of them, brought by the commission as in this act provided. En. March 12, 1872. Rep. 1903, 485. En. Stats. 1903, 506.

§ 2183. Duties of officers respecting insane poor. All peace officers and other persons having similar duties relating to the insane poor are charged with the duty of seeing that all poor and indigent insane persons within their respective municipalities are speedily granted the relief conferred by this act, and when so ordered by a superior judge, must see that they are, without unnecessary delay, transferred to the proper state hospitals provided for their care and treatment. Before sending a person to any such hospital, they must see that he is in a state of bodily cleanliness and comfortably clothed with new clothes in accordance with the regulations prescribed by the commission. It may by order direct that any person whom it deems unsuitable therefor shall not be employed as an attendant for such insane person. After the patient has been delivered to the proper officers of the hospital, the care and custody of the county or municipality from which he is sent, cease. En. March 12, 1872. Rep. 1903, 485. En. Stats. 1903, 507.

§ 2184. Homœopathic treatment. When the relatives, friends, or guardians of an insane person desire him to receive homœopathic treatment, he may be committed to the Southern California state hospital from any county of the state, in the discretion of the judge granting the order of commitment, if the crowded condition of that hospital does not preclude his admission to the detriment of other patients. En. Stats. 1903, 507.

§ 2185. Admissions under special agreements. Except as in this chapter provided all patients admitted to a state hospital shall be duly committed thereto and shall be subject to the general rules and regulations of the hospital. The medical superintendent may, with the approval of the board of managers, enter into a special agreement, secured by a properly executed bond, with the relatives, guardian or friend of any patient therein, for his care, support, maintenance or other expenses at the hospital, said agreement and bond shall be to the people

of the state of California and action to enforce the same may be brought thereon by the commission. All bills due under the provisions of this section shall be collected monthly. But no patient must be permitted to occupy more than one room in any state hospital, nor must any patient, his guardian, friends or relatives, be permitted to pay for his care and treatment therein, a sum greater than ten dollars per week. En. Stats. 1903, 507.

§ 2185a. Admission of insane soldiers and sailors. The commission may authorize the medical superintendent of any state hospital for the insane to admit thereto any insane soldier or sailor in the service of the United States, provided there is room therein, on such terms as may be agreed upon between the medical superintendent of the hospital and the properly authorized agents, officers or representatives of the United States government, and approved by the commission. En. Stats. 1903, 507.

§ 2186. Superintendent's duty to examine new patients. Every superintendent, or person in charge of a state hospital, must, within three days after the reception of a patient or patient, make or cause to be made a thorough physical and mental examination of such patient or inmate, and state the result thereof, on blanks prepared and exclusively set apart for that purpose. He must also make, or cause to be made, from time to time, examination of the mental state, bodily condition, and medical treatment of such patient or inmate, in such manner, and state its results, upon such blank forms, as shall be approved by the commission, during the time such patient or inmate remains under his care, and in the event of the death or discharge of such person, he must state, upon such blank forms, the circumstances thereof, and make such examinations at such other intervals of time and in such form as may be required by the commission. En. Stats. 1903, 507.

§ 2187. Transfer of patients. 1. When the building of any state hospital becomes overcrowded with patients or inmates, or the number of buildings is reduced by fire, or other casualties, or for other sufficient cause, the commission may, in its discretion, cause the transfer of patients or inmates therefrom or direct that patients or inmates re-

quired to be sent thereto, be transferred to another state hospital, where they can be conveniently received, or make, in emergencies, temporary provision for their care, preference to be given in such transfer to a hospital in an adjoining rather than a remote district. The expense of such transfer is chargeable to the state, and the bills for the same, when approved by the commission, must be paid by the treasurer of state on the warrant of the controller, out of any moneys provided for the care or support of the insane.

2. Patients may be transferred at the request of relatives or friends; provided, there is room in the hospital to which transfer is sought, but in case of transfers made as last provided the expense of such transfers shall be paid by such relatives or friends; provided, further, that transfers as last provided, shall not be made unless the consent of the commission and the medical superintendents of the hospitals from which and to which said transfer is to be made be obtained.

3. The commission, when it deems it necessary, may transfer any inmate of the home for feeble-minded for care and treatment to a state hospital for the insane for care and treatment therein and the counties, guardian, relatives or friends of such inmate shall be liable for his care, support and maintenance in said hospital for the insane in the same manner and to the same extent as under the commitment or terms of admission of said inmate to said home. The commission, when it deems it necessary, may transfer any patient in any state hospital for the insane to the said home for care and treatment therein. The estate, relatives or friends of such patient shall be liable for the care, support and maintenance of such patient at the said home in the same manner and to the same extent as at said hospital from which said patient was transferred. En. Stats. 1903, 508.

§ 2188. Habeas corpus. Any one in custody as an insane or incompetent person is entitled to a writ of habeas corpus, upon a proper application made by the commission, by such person, a relative or friend in his behalf to the superior judge of the county in which the hospital is located. Upon the return of such writ, the fact of his insanity or incompetency must be inquired into and deter-

mined. The medical history of such person as it appears in the clinical records, must be given in evidence, and the superintendent in charge of the state hospital wherein such person is held in custody, and any other person, must be sworn touching the mental condition of such person. En. Stats. 1903, 508.

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§ 2189. Discharge of patients. The superintendent of a state hospital on filing his written certificate with the secretary of board of managers, may discharge any patient, except one held upon an order of a court or judge having criminal jurisdiction in an action or proceeding arising out of a criminal action or proceeding arising out of a criminal offense, at any time, as follows:

1. A patient who, in his judgment, has recovered;

2. Any patient who is not recovered, but whose discharge, in the judgment of the superintendent, will not be detrimental to the public welfare, or injurious to the patient. The medical superintendent may, when he deems it advisable, refuse to discharge any patient as improved, unless the guardian, friends or relatives of such patient shall satisfy such medical superintendent that they are financially able and willing to properly care for such patient after his discharge. When the superintendent is unwilling to certify to the discharge of an unrecovered patient, upon request, and so certifies in writing, giving his reasons therefor, any superior judge of the county in which the hospital is situated may, upon such certificate, and an opportunity of a hearing thereon being accorded the superintendent, and upon other proofs as may be produced before him, direct, by order, the discharge of such patient, upon such security to the people of the state as he may require for the good behavior and maintenance of the patient. The certificate and the proof, and the order granted thereon, must be filed in the clerk's office of the county in which the hospital is situated, and a certified copy of the order in the hospital from which the patient is discharged.

3. The superintendent may grant a parole to a patient, not exceeding thirty days, under general conditions prescribed by the commission.

4. A patient committed to a hospital under the provisions of chapter six, title ten, part two, of the Penal Code, must,

upon the certificate of the superintendent that such person has recovered, approved by the superior judge of the county from which the patient was committed, be redelivered to the sheriff of such county, and dealt with as provided for by said chapter six of the Penal Code.

5. The medical superintendent of a state hospital may on his own motion and must on the order of the commission, discharge any patient who is not insane, or because he is not a proper case for treatment therein, or because such patient is a case of idiocy, imbecility, chronic harmless mental unsoundness or acute mania a potu. Such person, when discharged, shall be returned to the county from which he was committed at the expense of said county. When such person is a poor and indigent person he shall be delivered to the sheriff of the county who must take the necessary steps for the care of such person. When such person is a poor and indigent person he shall be cared for by such county as are other indigent poor. When any person is discharged from any state hospital as is last herein provided he shall not be again committed to any state hospital for the insane unless permission for such recommitment be first obtained from the medical superintendent thereof. Said medical superintendent shall refuse to receive such person on such recommitment unless such permission is obtained as herein provided.

6. When any person is discharged as recovered from a state hospital a copy of the certificate of discharge duly certified by the secretary of the board of managers, may be filed for record with the clerk of the superior court of the county from which said person was committed. The clerk shall record the same in a book kept for that purpose and shall keep an index thereof. No fees shall be charged by the clerk for performing such duties. Such certified copy of such certificate and the record of the same shall have the same legal effect as the original, and if no guardian has been appointed for such person as provided by sections seventeen hundred and sixty-three and seventeen hundred and sixty-four of the Code of Civil Procedure, such certificate, duly certified copies thereof and such record thereof shall have the same legal force and effect as a judgment of restoration to capacity made under the provisions of section seventeen hundred and sixty-six of the Code of Civil Procedure. The term patient as used

in subdivisions one, two, three and six of this section shall be regarded as referring to and including inmates of the home for the feeble-minded. En. Stats. 1903, 509.

§ 2190. Clothing of discharged patients. No patient or inmate must be discharged from a state hospital without suitable clothing adapted to the season in which he is discharged; and, if it cannot otherwise be obtained, the steward must, upon the order of the superintendent, furnish the same and money, not exceeding twenty-five dollars, to defray his necessary expenses until he can reach his relatives or friends, or find employment to earn a subsistence. En. Stats. 1903, 510.

§ 2190a. Escaped patients. When any patient or inmate has escaped from any state hospital it shall be the duty of the sheriff of any county in which he may be found, to arrest said patient or inmate and deliver him to any person authorized by the medical superintendent to receive him. En. Stats. 1903, 510.

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§ 2191. Return of insane person to other state or country. If any order is issued by any judge, committing to a state hospital a poor or indigent person who has not acquired a legal residence in this state, the commission must return such person, either before or after his admission to a state hospital, to the country or state to which he belongs, and for such purpose may expend as much of the money appropriated for the care of the insane or incompetent as may be necessary, subject to the approval of the state board of examiners. The medical superintendent of a state hospital is required to immediately notify the commission if there is any question as to the propriety of the commitment or detention of any person received at such hospital, and said commission upon such notification, shall inquire into the matter presented and take such action as may be deemed proper in the premises. En. Stats. 1903, 510.

§ 2192. Commitments of incompetents other than insane persons. Whenever any parent, guardian, or other person charged with the support of an imbecile or feeble-minded person, or any idiot, or epileptic who is not insane, desires him to be admitted into the home for feeble-minded, he may petition the superior court of the county in which he

resides, for an order admitting such person to such hospital. The judge must inquire into the condition or status of such person, and if he finds him to be an imbecile, feeble-minded person, idiot or epileptic, and that he has been a resident of the state for one year next preceding the presentation of the petition, such judge must make an order that he be received, maintained, and educated in such hospital, and on the presentation of such order the superintendent must receive him therein, if the hospital is not already full, or the fund available for its support exhausted; but the imbecile, feeble-minded person, idiot, or epileptic, need not be received if, in the judgment of the management of the hospital or the commission, he is not a suitable subject for admission thereto. The judge must inquire into the financial condition of the parent, guardian, or other person charged with the support of any such person, and if he finds him able, in whole or in part, to pay its expenses at such hospital, he must make a further order requiring such parent, guardian, or other person charged with the support of such person to pay to the hospital at stated periods such sums as, in the opinion of the judge, are proper during such time as the person may remain in such hospital. This order may be enforced by such further orders as the judge deems necessary, and may be varied, altered, or revoked in his discretion, and the board of managers may, with the approval of the commission, cause the peremptory discharge of any person who has been an inmate or patient for the period of one month. For each child or other person committed to such home, the judge must make such orders as are requisite to secure the payment, by the county from which he is committed, to the state treasury, of the sum of ten dollars monthly for and during each month, or part of month, such person so committed remains an inmate of the hospital, but in the absence of such order, or unless otherwise specially set forth therein, the signing and delivery by the judge of a commitment is prima facie evidence of the intent that the payment of such monthly support shall be a charge against the county, or city and county, from which the commitment was made. En. Stats. 1903, 511.

§ 2193. Moneys received from counties for support of incompetents. All moneys received from counties for the support of the inmates of the home for feeble-minded shall

be used for the payments of all claims for the general support and maintenance of the hospital and the inmates therein, except for salaries, wages, contingent expenses of the officers, and expenses for supplies, buildings, improvements and other expenditures, the cost of which are defrayed from the contingent fund. Each county auditor must include in his state settlement report rendered to the controller in the months of May and December the amount due the state under this act by reasons of commitments to the home for feeble-minded; and the county treasurer, at the time of the settlement with the state in such months, must pay to the state treasurer, upon the order of the controller, the amounts found to be due to the state by reason of the commitments herein referred to. En. March 12, 1872. Rep. 1903, 485. En. 1903, 511.

§ 2194. **Admissions of incompetents by agreement.** The board of managers, when the accommodations of the home for feeble-minded permit, if such action does not conflict with the interests or welfare of committed cases or applicants awaiting admission, may admit, for any stated period of time, without judicial commitment, such persons as are before and hereinafter specified as eligible for admission, upon such terms of special payment, gift, bequest, donation, legacy, transfer of real or personal property, or other lawful procedure, as may appear to them to be to the best interests of the state, and may further secure to the said home for the time such persons so admitted are inmates of the home such revenue or compensation as fully covers the actual cost of the home for all care, treatment, education, and support therein involved. The moneys received for the use of the hospital as in this chapter provided shall be paid into the contingent fund of the hospital and may be expended by the managers as is provided in section twenty-one hundred and fifty-eight relating to the contingent funds of state hospitals. Actions to recover the amounts due under this section may be brought by the commission in the manner provided by section 2197 of this chapter. En. March 12, 1872. Rep. 1903, 485. En. 1903, 512.

§ 2195. **Terms of life tenure.** Nothing in this chapter contained interferes with or affects the status of such inmates as may now be in the home for feeble-minded under

terms of life tenure, or such other inmates as may be deemed by the management self-supporting by the value of their labor, or who may pay in whole or in part such sums as, in the judgment of the management, cover the cost of their support. For all cases the commission is authorized and directed to secure from the proper officers of the several counties whence the inmates were committed or received, such arrangements for commitment under the terms of this act as may prevent such inmates becoming a sole charge upon the state; and the commission is further authorized to discharge, at its discretion, any person whose support is unprovided for by the terms of this chapter. En. March 12, 1872. Rep. 1903, 485. En. 1903, 512.

§ 2196. Private hospitals. No person, association, or corporation, must establish or keep an institution for the care, custody, or treatment of the insane, alleged insane or other incompetent persons referred to in this act for compensation or hire, without first obtaining a license therefor from the commission. Every application for such license must be accompanied by a plan of the premises proposed to be occupied, describing the capacities of the buildings for the uses intended, the extent and location of grounds appurtenant thereto, and the number of patients proposed to be received therein, with such other information, and in such form, as the commission may require. The commission must not grant any such license without first having made an examination of the premises proposed to be licensed. It must be satisfied that they are substantially as described, and are otherwise fit and suitable for the purposes for which they are designed to be used, and that such license should be granted. The commission may at any and all times examine and ascertain how far a licensed institution is conducted in compliance with the license therefor, and after due notice to the institution, and opportunity for it to be heard, the commission, having made a record of the proceeding upon such hearing, may, if the interests of the inmates of the institution so demand, for just and reasonable cause then appearing, and to be stated in its order, amend or revoke any such license by an order to take effect within such time after the service thereof upon the license, as the commission determines. The authorities of each institution for insane persons or other incompetents must place on file in the office of the institution

the recommendations made by the commissioners, as a result of their visits, for the purpose of consultation by such authorities, and for reference by the commissioners upon their visits. Every private institution for the care and treatment of insane or other incompetent persons referred to in this chapter shall keep records of every person admitted thereto, in the same manner and form prescribed for state hospitals, and shall furnish to the commission when required the facts mentioned in subdivision seven of section twenty-one hundred and forty-two. The commission or any member thereof may at such times as such commission or commissioners choose visit and examine any hospital or institution caring for and treating insane, alleged insane, or incompetent persons. In making such visits or examination, said commission or any member thereof shall exercise the same powers as are conferred on them by section twenty-one hundred and forty-three of this chapter. If any person or persons shall carry on or conduct or attempt to carry on or conduct an institution for the care or treatment, or for the care and treatment of the insane or alleged insane, or incompetents without first obtaining a license from the state commission in lunacy, as in this chapter provided, such person or persons shall be deemed guilty of a misdemeanor for each violation of the provisions of this section, and on conviction thereof shall be punished by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. The managing and executive officers of any corporation violating the provisions of this section shall be liable under the provisions of this section in the same manner and to the same effect as a private individual violating the same. En. March 12, 1872. Rep. 1903, 485. En. 1903, 512.

§ 2197. Actions by commission. The commission may in its own name bring an action to enforce payment for the cost of determining the insanity of any person and securing his admission into a state hospital when his estate or any person is liable for the same, or to recover for the use and benefit of any state hospital the amount due for the care, support, maintenance and expenses of any patient or inmate therein, against any county, person, guardian or relative liable for such care, support, main-

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tenance and expenses. En. March 12, 1872. Rep. 1903, 485. En. 1903, 513.

Cal.Rep.Cit. 87, 197.

§ 2198. Interpretation. The provisions of this chapter and every amendment thereto, so far as they are the same as existing statutes or the common law must be regarded as continuations thereof, and not as new enactments. En. March 12, 1872. Rep. 1903, 485. En. 1903, 514.

§ 2199. Reservations. No action or proceeding commenced before this chapter or any amendments thereto, takes effect, and no rights accrued are affected by its provisions. Any action or proceeding commenced before this chapter or any amendment thereto takes effect for the enforcement of any right, liability or obligation accruing before this chapter or any amendment thereto takes effect may be maintained and prosecuted to final determination in the manner and form in which the same was brought. After this chapter takes effect all actions or proceedings brought for the enforcement of such rights, liabilities and obligations must conform to the provisions of this chapter as far as applicable. En. March 12, 1872. Rep. 1903, 485. En. 1903, 514.

§ 2200. (Repealed.) En. March 12, 1872. Rep. 1903, 485.

§ 2210. (Repealed.) En. March 12, 1872. Rep. 1903, 485.

§ 2211. (Repealed.) En. March 12, 1872. Rep. 1903, 485.

§ 2212. (Repealed.) En. March 12, 1872. Rep. 1903, 485.

§ 2213. (Repealed.) En. March 12, 1872. Rep. 1903, 485.

§ 2214. (Repealed.) En. March 12, 1872. Rep. 1903, 485.

§ 2215. (Repealed.) En. March 12, 1872. Rep. 1903, 485.

§ 2216. (Repealed.) En. March 12, 1872. Rep. 1903, 485.

§ 2217. (Repealed.) En. March 12, 1872. Am'd. 1881, 7. Rep. 1903, 485.

Cal.Rep.Cit. 87, 195; 87, 199.

§ 2218. (Repealed.) En. March 12, 1872. Am'd. 1895, 36. Rep. 1903, 485.

§ 2219. (Repealed.) En. March 12, 1872. Rep. 1903, 485.

Cal.Rep.Cit. 93, 181.

§ 2220. (Repealed.) En. March 12, 1872. Rep. 1903, 485.

§ 2221. (Repealed.) En. March 12, 1872. Am'd. 1880, 59. Rep. 1903, 485.

Cal.Rep.Cit. 50, 119; 77, 595.

§ 2222. (Repealed.) En. March 12, 1872. Rep. 1903, 485.

New Sec. 2236, 1905, 488

CHAPTER II.

DEAF, DUMB, AND BLIND ASYLUM.

Article I. General Provisions, §§ 2237-2244.
II. Board of Directors, §§ 2254-2257.
III. Principal Teacher, §§ 2267-2270.
IV. Treasurer, §§ 2280-2282.

ARTICLE I.

GENERAL PROVISIONS.

§ 2237. Object of asylum.
§ 2238. Who entitled to its benefits.
§ 2239. Same.
§ 2240. Clothing and maintenance of pupils.
§ 2241. Blindness and deafness defined.
§ 2242. Geological cabinet.
§ 2243. Salaries, how paid.
§ 2244. Approval and filing of official bonds.

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§ 2237. Object of asylum. The deaf, dumb and blind asylum, located in Alameda County, has for its object the education of the deaf, dumb, and blind. En. March 12, 1872.

Acts relating to asylum: See General Laws, title Deaf, Dumb, and Blind.

§ 2238. Who entitled to its benefits. Every deaf, dumb, or blind person, resident of this state, of suitable age and capacity, is entitled to an education in this asylum free of charge. En. March 12, 1872

§ 2239. Same. Such persons not residents of this state are entitled to the benefits of this asylum upon paying to the treasurer thereof eighty-five dollars quarterly in advance. En. March 12, 1872.

§ 2240. Clothing and maintenance of pupils. If the parents or guardians of any pupil in the asylum for the deaf, dumb, and blind shall be unable to clothe such child, the parent or guardian may testify to such inability before the judge of the superior court of the county wherein he

or she is resident, and if said judge is satisfied that the parent or guardian is not able to provide suitable clothing for the child, he shall issue a certificate to that effect; and upon presentation of such certificate, it shall be the duty of the directors of said asylum to clothe the child, the expenses to be paid out of the appropriations made for the support of the asylum. All pupils in the asylum shall be maintained at the expense of the state. En. March 12, 1872. Am'd. 1873-4, 115; 1880, 21.

§ 2241. **Blindness and deafness defined.** Inability by reason of defective sight to read ordinary printed matter is blindness, and inability to hear ordinary conversation is deafness, within the meaning of this chapter. En. March 12, 1872.

§ 2242. **Geological cabinet.** The state geologist and regents of the university may make up from duplicate specimens under their control a geological cabinet for the use of the asylum. En. March 12, 1872.

§ 2243. **Salaries, how paid.** The salaries mentioned in this chapter must be paid monthly out of the moneys appropriated for the support of the asylum. En. March 12, 1872.

§ 2244. **Approval and filing of official bonds.** The official bonds required by the provisions of this chapter must be approved by the board, and filed and recorded in the office of the secretary of state. En. March 12, 1872.

Official bonds: Ante, secs. 947, 987.

ARTICLE II.

BOARD OF DIRECTORS.

§ 2254. Under control of board of directors.
§ 2255. Powers and duties of board.
§ 2256. Approval of estimates and drawing of moneys.
§ 2257. Directors to receive no salary.

§ 2254. **Under control of board of directors.** The asylum is under the management and control of a board of directors, consisting of five persons, appointed and holding their offices as provided in title I of part III of this code. En. March 12, 1872.

Board of directors, appointment and term of office: Ante, secs. 368, subd. 2, and 369.

§ 2255. Powers and duties of board. The powers and duties of the board are as follows:

1. To make by-laws, not inconsistent with the laws of the state, for their own government, and the government of the asylum.

2. To elect the principal teacher.

3. To elect a treasurer who shall not be a member of the board of directors.

4. To elect a physician for the asylum, for the term of two years, who shall not be a member of the board of directors.

5. To remove, at pleasure, any teacher or employee.

6. To fix the compensation of teachers and employees.

7. To make diligent inquiry into the departments of labor and expense, the condition of the asylum, and its prosperity.

8. To hold stated meetings at the asylum at least once in every three months.

9. To keep a record of their proceedings.

10. To report to the governor a statement of the receipts and expenditures, the condition of the asylum, the number of pupils, and of such other matters touching the duties of the board as they deem advisable. En. March 12, 1872. Am'd. 1873-4, 36.

Power of board over bequests—to manage and invest: Stats. 1876, p. 686.

Act conferring certain powers on board: See General Laws, title Deaf, Dumb, and Blind.

§ 2256. Approval of estimates and drawing of moneys. If the board approve the estimates made under the provisions of section 2268, it must notify the controller of state, who must draw his warrant for the amount estimated, in three equal sums, payable to the board monthly, out of any moneys in the state treasury appropriated for the use of the asylum. En. March 12, 1872.

§ 2257. Directors to receive no salary. The directors receive no compensation. En. March 12, 1872.

ARTICLE III.

PRINCIPAL TEACHER.

§ 2267. Qualifications.
§ 2268. Powers and duties.
§ 2269. Salary.
§ 2270. Bond.

§ 2267. Qualifications. The principal teacher must have not less than three years' experience in the art of teaching the deaf, dumb, and blind. En. March 12, 1872.

§ 2268. Powers and duties. He is the chief executive officer of the asylum, with powers and duties as follows:

1. To superintend the grounds, buildings, and property of the asylum.

2. With the consent of the board of directors, to fix the number of and appoint and remove the assistant teachers and employees.

3. To prescribe and enforce the performance of the duties of the assistant teachers and employees.

4. To control the pupils and prescribe and enforce a system of instruction.

5. To reside at the asylum.

6. To keep a daily record of his official acts in the manner prescribed by the by-laws.

7. To estimate quarterly in advance the expenses of the institution, and report such estimate to the board of directors.

8. To make up his annual accounts to the first of July in each year, and as soon thereafter as possible report a statement thereof and of the condition of the asylum to the board of directors. En. March 12, 1872.

§ 2269. Salary. His annual salary must not exceed three thousand dollars. En. March 12, 1872.

§ 2270. Bond. He must execute an official bond in the sum of five thousand dollars. En. March 12, 1872.

Official bonds: Ante, secs. 947 et seq.

ARTICLE IV.

TREASURER.

§ 2280. Duties of.
§ 2281. Salary.
§ 2282. Bond.

§ 2280. Duties of. It is the duty of the treasurer:

1. To act as secretary of the board of directors.

2. To keep the accounts of the board and of the receipts, expenditures, assets, and liabilities of the asylum.

3. To report quarterly to the board a statement under oath of the receipts and expenditures of the preceding quarter.

4. To perform such other duties as may be required of him by the by-laws or board of directors. En. March 12, 1872.

§ 2281. Salary. The annual salary of the treasurer shall not exceed twelve hundred dollars, and shall be fixed by the board of directors. En. March 12, 1872. Am'd. 1891, 3.

§ 2282. Bond. He must execute an official bond in the sum of ten thousand dollars. En. March 12, 1872.

CHAPTER III.

STATE LIBRARY.

§ 2292. Board of trustees, and term of office of.
§ 2293. General powers and duties of board.
§ 2294. Term of office of librarian.
§ 2295. General duties of librarian.
§ 2296. Who may take books.
§ 2297. Books taken by members of legislature.
§ 2298. Books taken by state officers.
§ 2299. Liability for injury to books.
§ 2300. Library fund.
§ 2301. Library, time to be kept open.
§ 2302. Salary of librarian.
§ 2303. Salary of deputies.
§ 2304. Bond of librarian.
§ 2305. When this chapter takes effect.

§ 2292. Board of trustees, and term of office of. The state library is under the control of a board of trustees consisting of five members, holding their offices for the term of four years, and appointed by the governor in the following manner, to wit:

Three trustees shall be appointed for the full term of four years, from and after the twenty-eighth day of Febru-

ary, nineteen hundred and two; and two trustees shall be appointed for the term of two years from and after said date. At the expiration of the terms of office of the trustees appointed as above provided, their successors shall thereafter be appointed for the full term of four years. Appointments to fill vacancies caused by death, resignation, or removal shall be for the unexpired term only. En. March 12, 1872. Am'd. 1899, 30.

Cal.Rep.Cit. 80, 283.

San Francisco law library: Stats. 1870, p. 235; Stats. 1880, p. 194.

§ 2293. General powers and duties of board. The powers and duties of the board are as follows:

1. To make rules and regulations, not inconsistent with law, for its government and for the government of the library;

2. To appoint a librarian, who must designate one of his deputies as chief deputy;

3. Whenever necessary, to authorize the librarian to appoint an additional deputy and other assistants;

4. To sell or exchange duplicate copies of books;

5. To keep in order and repair the books and property in the library;

6. To draw from the state treasury, at any time, all moneys therein belonging to the library fund;

7. To prescribe rules and regulations permitting persons other than those named in section twenty-two hundred and ninety-six, to have the use of books from the library;

8. To collect and preserve statistics and other information pertaining to libraries, which shall be available to other public libraries within the state applying for the same;

9. To make to the governor, biennially, a report of its transactions. En. March 12, 1872. Am'd. 1899, 30; 1903, 81.

§ 2294. Term of office of librarian. The librarian holds his office for the term of four years, unless sooner removed by a unanimous vote of all the trustees. En. March 12, 1872.

§ 2295. General duties of librarian. It is the duty of the librarian:

1. To be in attendance at the library during office hours.

2. To act as secretary of the board of trustees, and keep a record of their proceedings.

3. To purchase books, maps, engravings, paintings and furniture for the library.

4. To number and stamp all books and maps belonging to the library, and to keep a catalogue thereof.

5. To have bound all books and papers that require binding.

6. To keep a register of all books and property added to the library, and of the cost thereof.

7. To keep a register of all books taken from the library.

8. To distribute to the state university, to the Leland Stanford Jr. University, to each incorporated college in the state, to each public library therein, and to such other literary and scientific institutions therein as his judgment may dictate, one copy each of all official state publications, including the laws, journals and appendices of the legislature, and to establish and maintain with similar public institutions of the general government, the other states, and foreign countries, a system of exchange of such state publications for like official publications and other valuable works. The state librarian is empowered to make requisition upon the secretary of state for a sufficient number of such state publications, to enable him to carry out the requirements of this subdivision. En. March 12, 1872. Am'd. 1873-4, 37; 1903, 82.

Cabinet department in state library: Stats. 1872, p. 824. Transferred to Crocker art gallery: Stats. 1887, p. 74. Transfer of mineralogical specimens to mining bureau: Senate concurrent resolution No. 10, in Stats. 1881, p. 103.

§ 2296. Who may take books. Books may be taken from the library by the members of the legislature during the sessions thereof, and by other state officers at any time. En. March 12, 1872.

§ 2297. Books taken by members of legislature. Books taken by members of the legislature must be returned at the close of the session; and before the controller draws his warrant in favor of any member of the legislature for his last week's salary, he must be satisfied that such member has returned all books taken by him and paid for any injuries thereto. En. March 12, 1872.

§ 2298. Books taken by state officers. The controller, when notified by the state librarian that any officer or employee of the state for whom he draws a warrant for salary has failed to return any book taken by him (or for which he has given an order) within the time prescribed by the rules, or the time within which it was agreed to be returned, and which notice shall give the value thereof, must, after first informing said officer or employee of such notice, upon failure by him to return the said book, deduct from the warrant for the salary of said officer or employee, twice the value of such book, and place the amount so deducted in the state library fund. In case of the neglect or refusal on the part of any officer or employee of the state to return a book for which he has given an order or a receipt or has in his possession, the state librarian is authorized to purchase for the library a duplicate of said book, and to notify the controller of such purchase, together with the cost of the same. Upon the receipt of such notice from the librarian, the controller must deduct twice the cost of said duplicate book from the warrant for the salary of said officer or employee, and place the amount so deducted in the state library fund. The state librarian is empowered to bring suit in his official capacity for the recovery of any book or books, or for three times the value thereof, together with costs of suit, against any person having the same in his possession or being responsible therefor. In case the librarian has purchased a duplicate of any book as provided in this chapter, he is authorized to bring suit as aforesaid for three times the amount so expended for said duplicate, together with costs of suit. En. March 12, 1872. Am'd. 1899, 30; 1903, 82.

§ 2299. Liability for injury to books. Every person who injures or fails to return any book taken is liable to the librarian in three times the value thereof. En. March 12, 1872.

§ 2300. Library fund. The state library fund consists of the fees collected and paid into the state treasury by the secretary of state and surveyor-general. En. March 12, 1872. Am'd. 1873-4, 38.

§ 2301. Library, time to be kept open. During the session of the legislature and of the supreme court, the

library must be kept open every day from nine o'clock A. M. until nine o'clock P. M., and at other times during such hours as the trustees may direct. En. March 12, 1872.

§ 2302. **Salary of librarian.** The annual salary of the librarian is three thousand dollars. En. March 12, 1872.

§ 2303. **Salary of deputies.** The annual salary of each deputy is eighteen hundred dollars. En. March 12, 1872.

§ 2304. **Bond of librarian.** The librarian must execute an official bond in the sum of three thousand dollars. En. March 12, 1872.

Official bonds: Secs. 947 et seq.

§ 2305. **When this chapter takes effect.** This chapter shall be in force and effect from and after the first day of May, eighteen hundred and seventy-two. En. March 12, 1872.

CHAPTER IV.

SUPREME COURT LIBRARY.

§ 2313. Who may use.
§ 2314. Librarian, duties and salary.
§ 2315. Who may take books.
§ 2316. Fund for support of.

§ 2313. **Who may use.** This library is for the use of the justices and counselors-at-law of the supreme court. En. March 12, 1872.

§ 2314. **Librarian, duties and salary.** The justices of the supreme court are hereby authorized to appoint a librarian for the supreme court library, who, under their direction, shall conduct its affairs and be responsible for its care. He shall receive the salary provided for in section seven hundred and thirty-nine of this code. En. March 12, 1872. Am'd. 1897, 209.

§ 2315. **Who may take books.** Books may be taken from this library by the justices of the supreme court. At the request of a counselor of the court, the bailiff must take from the library to the courtroom books for use in the argument of any cause. En. March 12, 1872.

§ 2316. **Fund for support of.** The supreme court library fund consists of fees collected by the clerk of the

court, as provided in section 753 of this code, and is under the control of the court. Upon its order the controller must, without the approval of any board, draw his warrant upon the treasurer for the amount specified, and in favor of the person designated in such order, which warrant must be paid out of such fund. En. March 12, 1872.

CHAPTER

OTHER PUBLIC INSTITUTIONS.

§ 2326. State agricultural society.
§ 2327. University of California, normal school.
§ 2328. State prison.

§ 2326. State agricultural society. The powers, duties, privileges, and rights of the California state agricultural society are fixed by "An act to incorporate the state agricultural society, and to appropriate money for its support," approved May thirteenth, eighteen hundred and fifty-four, and the acts supplemental thereto, approved March twelfth, eighteen hundred and sixty-three, and April thirteenth, eighteen hundred and sixty-three. En. March 12, 1872.

Board of agriculture: See ante, sec. 705.

See also General Laws, title Agriculture.

Agricultural fair corporations: Civ. Code, secs. 620-622.

Horticulture: See General Laws, title Horticulture.

§ 2327. University of California, normal school. The control and management of the university of California and the state normal school are provided for in title III, of part III, of this code. En. March 12, 1872.

University of California: Ante, secs. 1385-1477.

State normal school: Ante, secs. 1487-1507.

§ 2328. State prison. The control and management of the state prison is provided for in part III of the Penal Code. En. March 12, 1872.

State prison, acts relating to: See Pen. Code, Appendix, title State Prisons.

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TITLE VI.

PUBLIC WAYS.

Chapter I. Public Waters, §§ 2348-2608.
II. Highways, §§ 2618-2772.
III. Toll Roads, §§ 2779-2832.
IV. Toll Bridges and Ferries, §§ 2843-2895.
V. Wharves, Chutes, and Piers, §§ 2906-2921.
VI. Miscellaneous Provisions Relating to Public Ways, §§ 2931-2938.

CHAPTER I.

PUBLIC WATERS.

Article I. General Provisions respecting Public Waters, §§ 2348-2351.
II. Navigation, §§ 2360-2379.
III. Floating Lumber, §§ 2389-2398.
IV. Wrecks and Wrecked Property, §§ 2408-2418.
V. Pilots and Pilot Commissioners, §§ 2429-2447.
VI. Pilot Regulations for San Francisco, Benicia, and Mare Island, §§ 2457-2470.
VII. Pilot Regulations for Humboldt Bay and Bar, §§ 2476-2491.
VIII. Port Wardens, §§ 2501-2511.
IX. San Francisco Harbor and State Harbor Commissioners, §§ 2520-2554.
X. Harbor Commissioners for Port of Eureka, §§ 2567-2572.
XI. Harbor Commissioners for Bay of San Diego, §§ 2575-2608.

ARTICLE I.

GENERAL PROVISIONS RESPECTING PUBLIC WATERS AND OBSTRUCTIONS THEREIN.

§ 2348. What waters are public ways.
§ 2349. Certain streams and waters declared navigable, and are public ways.
§ 2350. Penalty for felling trees into public waters.
§ 2351. Napa creeks declared navigable.

§ 2348. What waters are public ways. Navigable waters and all streams of sufficient capacity to transport the products of the country are public ways for the purposes of navigation and of such transportation. **En. March 12, 1872.**

Cal.Rep.Cit. 67, 545.

Navigable waters, frontages on, subject to right of eminent domain: Const. Cal., art. XV, sec. 1. Prohibition against obstruction: Const. Cal., art. XV, sec. 2.

Navigable stream, obstructing is misdemeanor: Pen. Code, sec. 611.

Bridges across navigable streams and other waters: Stats. 1881, p. 76. As to repairing and constructing: Stats. 1897, p. 21.

Towpaths along banks of navigable streams, authorized: Stats. 1872, p. 940.

Watercourses as boundaries: See Civ. Code, sec. 830.

Improving streams not navigable: Sec. 4085, post.

Declaring streams innavigable for floating lumber: See General Laws, title Waters.

Appointment of examining commission on rivers and harbors: See General Laws, title Waters.

§ 2349. Certain streams and waters declared navigable, and are public ways. The following streams and waters are declared public ways: So much of a slough as lies between Simons Canal, in the town of Alviso, and the bay of San Francisco; Petaluma River, from its mouth to the southerly line of Washington Street, in the city of Petaluma; the Sonoma River, between its mouth and a point opposite Fowler's Hotel, in the town of San Luis; the Napa River, between its mouth and the toll-bridge; the Suisun River, between its mouth and the town of Suisun embarcadero; the Sacramento River, between its mouth and the mouth of Middle Creek; the Feather River, between its mouth and a point fifty feet below the bridge crossing Feather River first above the mouth of the Yuba River; the Yuba River, between its mouth and a point at the mouth of the slough at the foot of F Street, in the city of Marysville; the San Joaquin River, between its mouth and Sycamore Point; the Stockton Slough, between its mouth and the west line of El Dorado Street in Stockton; the Mokelumne River, between its mouth and the first falls; the Tuolumne River, between its mouth and Dickinson's Ferry; Deer Creek, between the house of Peter Lassen and its mouth; Big River, three miles from its mouth; Noyo River, three miles from its mouth; Albion River, three miles from its mouth; San Antonio Creek, in the county of Alameda, from its mouth to the old embarcadero of San Antonio; the Arroyo del Medo, in the county of Santa Clara, from its mouth to the upper line of the town of New Haven; Mission Creek,

in the county of San Francisco; that portion of Channel Street in the city of San Francisco, and lying east of and between the easterly line of Harrison Street and the water-front of the bay of San Francisco, the width thereof to be sixty feet from Harrison to the northeasterly line of Seventh Street, and one hundred and forty feet from the northeasterly line of Seventh to the city front; that certain creek running through tide-land survey numbered sixty-eight, and swamp and overflowed land survey numbered one hundred and forty-five, from its mouth to the head of tide-water therein; San Leandro Creek, from its mouth at San Francisco Bay to Andrews' Landing; San Lorenzo Creek, from its mouth at San Francisco Bay to Roberts's Landing; Johnson's Creek, from its mouth at San Francisco Bay to Simpson's Landing; the north branch of Alameda Creek, from its mouth to Eden Landing; San Rafael and Corte Madera creeks, in Marin County, from their mouths as far up as tide-water flows therein; the Neuces Creek, from its mouth at Suisun Bay to a point one half mile above the warehouse of George P. Loucks; Diablo Creek, from its junction with the Neuces, to a point opposite the warehouse of Frank Such, in Contra Costa County; the Arroyo de San Antonio, or Keys Creek, in Marin County, from its mouth at Tomales Bay to the warehouses on the point at Keys embarcadero; all the streams and sloughs emptying into Elk River, and all streams and sloughs south of Eureka, in Humboldt County, which are now or at any time have been used for the purpose of floating logs or timber, and all the sloughs south of Humboldt Point, in said county, that at high water have a depth of two feet of water, and wide enough to float and admit a boat carrying five tons or more freight; Novato Creek, or estuary, in Marin County, from its mouth to Sweetzer's Landing; Salinas River and Elkhorn Slough, or Estero Viejo, in Monterey County, from its mouth as far up as tide-water flows. En. March 12, 1872. Am'd. 1885, 220; 1891, 96.

Cal.Rep.Cit. 79, 350; 107, 223; 123, 180.

Acts declaring streams navigable: See General Laws, title Waters.

§ 2350. **Penalty for felling trees into public waters.** Whoever cuts or causes to be cut down any tree so that it falls into any stream or other waters declared

by statute to be a public way, and does not remove it therefrom within twenty-four hours thereafter, is liable to a penalty of five dollars for each tree. En. March 12, 1872.

Malicious injuries to public highways, private ways and bridges upon either, punishment for: Pen. Code, sec. 588.

Causing obstruction to harbor by throwing ballast overboard, or otherwise, is misdemeanor: Pen. Code, sec. 613.

§ 2351. Napa creeks declared navigable. The streams known as First Napa Creek, Second Napa Creek, and Third Napa Creek, in the county of Sonoma, and between the Napa and Sonoma rivers, in the county of Sonoma, are hereby declared navigable waters of the state, in pursuance of title sixth, chapter one, article one, of part three of said code. En. Stats. 1877-8, 45.

ARTICLE II.

NAVIGATION.

§ 2360. Steamers meeting.
§ 2361. Landing and receiving passengers by small boat.
§ 2362. Lines used for landing not to be drawn by machinery.
§ 2363. The engine to be stopped.
§ 2364. Boats, oars, and signals.
§ 2365. Steamers overtaking.
§ 2366. Steamers to carry signals at night.
§ 2367. Penalties, what amount.
§ 2368. Vessels at anchor to show lights.
§ 2369. No recovery for collision in case of neglect.
§ 2370. Rafts on the Sacramento and San Joaquin rivers.
§ 2371. Vessels to carry what boats.
§ 2372. Penalty, what amount.
§ 2373. Racing, penalty for.
§ 2374. Steamboats to wear spark catchers.
§ 2375. Inspectors to supervise and direct spark catchers.
§ 2376. Compensation of inspectors.
§ 2377. Neglect of duty and penalty therefor.
§ 2378. Owner liable for master's or engineer's penalties.
§ 2379. Penalties, how recovered.

§ 2360. Steamers meeting. When steamers meet each must turn to the right, so as to pass without interference. En. March 12, 1872

Rules of navigation, collisions, etc: Civ. Code, secs. 970-973.

Actions against steamers, vessels, and boats: Code Civ. Proc., secs. 813-827.

§ 2361. Landing and receiving passengers by small boat. When a passenger is to be landed from a steamer by means of a small boat, he must not be suffered to get into it until it is completely afloat and wholly disengaged from the steamer, except by the painter. En. March 12, 1872.

§ 2362. Lines used for landing not to be drawn by machinery. No line used for the purpose of landing or receiving passengers must be attached in any way to the machinery of any steamer, nor must the small boat used for such purpose be hauled in by means of such machinery. En. March 12, 1872.

§ 2363. The engine to be stopped. During the landing and receiving of a passenger, and the going and returning of the small boat for the purpose, the engine must be stopped, and must not be put in motion except to give sufficient force to keep the steamer in a proper direction and safe position. En. March 12, 1872.

§ 2364. Boats, oars, and signals. In every small boat there must be kept a good and suitable pair of oars; and in the night-time a signal, by means of a horn or trumpet, must be given to the steamer from the small boat, when, having landed or received its passengers, it is ready to leave the shore. En. March 12, 1872.

§ 2365. Steamers overtaking. A steamer going in the same direction with another steamer ahead of it must not approach or pass the other within the distance of ten yards; and the steamer ahead must not be so navigated as unnecessarily to bring it within ten yards of the steamer following. En. March 12, 1872.

§ 2366. Steamers to carry signals at night. When any steamer is running in the night-time her master must cause her to carry two conspicuous lights; one exposed near her bow and the other near her stern; the latter must be at least twenty feet above her deck. En. March 12, 1872.

§ 2367. Penalties, what amount. Every master or other person in charge who violates any of the provisions of the preceding seven sections, incurs a penalty of two hundred and fifty dollars for each offense. En. March 12, 1872.

§ 2368. Vessels at anchor to show lights. When any vessel is at anchor in the night-time, in any of the harbors or ports within the jurisdiction of this state, the master or other person at the time in the charge of the vessel must cause a conspicuous light shown in her rigging at least twenty feet above her deck, and another light from her taffrail, under penalty of fifty dollars for every neglect. En. March 12, 1872.

§ 2369. No recovery for collision in case of neglect. Neither the master or owner of any vessel can recover damages for injuries to the same or to himself by a collision growing out of a non-compliance upon its part with the provisions of the preceding six sections. En. March 12, 1872.

Collisions: Civ. Code, secs. 970-978.

§ 2370. Rafts on the Sacramento and San Joaquin rivers. Every raft of timber floated on the Sacramento or San Joaquin rivers at night must show two red lights, one at each end, and at least ten feet above the upper logs or plank of such raft, under penalty of fifty dollars for every neglect. En. March 12, 1872.

§ 2371. Vessels to carry what boats. Every vessel propelled by steam, navigating any waters of this state and carrying passengers, must be provided with boats as follows:

1. If of five hundred tons measurement, one first-class life boat; one row boat, twenty-five feet long by seven wide, capable of carrying fifty persons each; and at least one other good row boat.

2. If of two hundred and fifty and less than five hundred tons measurement, at least two ordinary row boats.

3. If of less than two hundred and fifty tons burden, at least one small row boat.

All which boats must be attached in such manner that they can be launched at any time for immediate use. En. March 12, 1872.

§ 2372. Penalty, what amount. The master and owners, and each of them, of any vessel not provided with boats as required in the preceding section, are subject to a penalty of not exceeding two hundred and fifty dollars. En. March 12, 1872.

§ 2373. Racing, penalty for. If the master or other person in charge of a steamer navigating any of the waters of this state and used for the conveyance of passengers, or if the engineer or other person in charge of the boiler or other apparatus for the generation of steam does, for the purpose of increasing speed or excelling any other vessel in speed, suffer to be created an undue or an unsafe quantity of steam, he is subject to a penalty of five hundred dollars. En. March 12, 1872.

§ 2374. Steamboats to wear spark catchers. All high pressure steamboats navigating the Sacramento anu San Joaquin rivers, or any of their tributaries above the mouth of the San Joaquin River or the city of Sacramento, must have securely attached to their chimneys metal bonnets or spark catchers. En. March 12, 1872.

§ 2375. Inspectors to supervise and direct spark catchers. All such bonnets or spark catchers must be constructed under the direction and supervision of the United States inspectors of steamboats for the district of San Francisco. En. March 12, 1872.

§ 2376. Compensation of inspectors. For each bonnet or spark catcher worn by any steamboat inspected or constructed under the direction of and certified to by the inspector, he may receive from the owner thereof ten dollars as a compensation for his services for such direction, supervision, or inspection and certificate. En. March 12, 1872.

§ 2377. Neglect of duty and penalty therefor. Every owner or master who navigates a steamboat without bonnets or spark catchers inspected and attached as required by the preceding three sections, is subject to a penalty of twenty dollars for each day he navigates his boat without the same. The owner of such boat is further liable for all damage done by reason of such neglect. En. March 12, 1872.

§ 2378. Owner liable for master's or engineer's penalties. The owners of every steamboat are responsible for the good conduct of the master or other person in charge employed by them, and they are jointly and severally liable for any penalty incurred by the master, engineer,

or other person in charge, which cannot be collected from him by due course of law, as if they were his sureties. En. March 12, 1872.

§ 2379. Penalties, how recovered. The penalties given by this article may be recovered by the district attorney of any county bordering on the water where the offense was committed or the penalty incurred, to whom notice is first given, and when recovered are to be equally divided between the common school and indigent sick fund of the county whose district attorney recovers the same. Any judgment recovered hereunder is a lien on the vessel against whose owners or master it is recovered. En. March 12, 1872.

ARTICLE III.

FLOATING LUMBER.

§ 2389. Definition of lumber.
§ 2390. Owner may reclaim lumber.
§ 2391. If not taken away to be turned over to sheriff.
§ 2392. Application of proceeds when sold.
§ 2393. Subsequent disposition of proceeds.

§ 2389. Definition of lumber. The word "lumber" is used in this article to designate all timber, whether in logs, boards, planks, or beams, and whether in rafts or otherwise, but does not include the sort of wood commonly called driftwood. En. March 12, 1872.

Declaring streams innavigable for floating lumber: See General Laws, title Waters.

§ 2390. Owner may reclaim lumber. Whenever any lumber drifts upon any island in any of the waters of this state, or upon the bank of any such waters, the owner of the lumber may remove it on payment or tendering to the owner or occupant of the land the amount of the damages which he has sustained by reason thereof, and which may accrue in its removal; and if the parties cannot agree as to the amount of such damages, either party may have the same appraised by two disinterested citizens of the county, who may hear proofs and determine the same at the expense of the owner of the lumber. En. March 12, 1872.

Cal.Rep.Cit. 53, 22.

§ 2391. If not taken away to be turned over to sheriff. If the owner of such lumber does not, within three months from the time it was so drifted, take the same away, the owner or occupant of the land must deliver a bill of his charges and appraisement of damages, together with the lumber, to the sheriff of the county, and thereafter the sheriff must dispose of the same as is required by article IV of this chapter with regard to wrecked perishable property. En. March 12, 1872.

§ 2392. Application of proceeds when sold. When sold, the proceeds of the lumber must be applied, first, to the payment of the charges of sale, and in liquidation of the expenses and damages awarded to the person entitled thereto; and the residue must be paid to the county treasurer, to be by him paid over to the owner, or his representatives or assigns, on the production of satisfactory proof of ownership to the judge of the superior court of the county, and on his order therefor, made within one year after its receipt. En. March 12, 1872. Am'd. 1880, 21.

§ 2393. Subsequent disposition of proceeds. The rejection by the judge of any claimant's right to such proceeds is conclusive, unless within six months thereafter he commences action therefor. In case no claim is made or sustained to such proceeds, the same must, by the county treasurer, be placed in the common school fund of the county. En. March 12, 1872. Am'd. 1880, 21.

ARTICLE IV.

WRECKS AND WRECKED PROPERTY.

§ 2403. Duties of officers and citizens.
§ 2404. Officers, etc., entitled to salvage. Salvage not to exceed half value of property saved.
§ 2405. Owners of wrecked property may reclaim it.
§ 2406. Sheriff to keep possession until owner found.
§ 2407. Perishable property.
§ 2408. Order for surrender to claimant.
§ 2409. Claimant to first give bond.
§ 2410. Action on bond.
§ 2411. Owner may sue, although claim rejected.
§ 2412. Salvage to be stated in writing.
§ 2413. Proceedings to settle disputed claims to salvage.
§ 2414. Costs of contest.
§ 2415. Wrecked property not claimed to be sold.
§ 2416. Notice of sale.
§ 2417. Notice of wrecked property.
§ 2418. Expense of notice.

§ 2403. Duties of officers and citizens. The sheriff in each county must give all possible aid and assistance to vessels stranded on its coast, and to the persons on board the same, and exert himself to save and preserve such persons, vessels, and their cargoes, and all goods and merchandise which may be cast by the sea upon the land, and to this end may employ as many persons as he may think proper. All citizens must aid the sheriff when required. En. March 12, 1872.

Wrecked property distinguished from lost and unclaimed property: Secs. 3136-3157.

§ 2404. Officers, etc., entitled to salvage. Salvage not to exceed half value of property saved. Sheriffs and all persons employed by them, or aiding in the recovery and preservation of wrecked property, are entitled to a reasonable allowance as salvage for their services, and to all expenses incurred by them in the performance of such services, out of the property saved; and the officer having the custody of such property must detain it until the same are paid or tendered. But the whole salvage claimed must not exceed one half of the value of the property or proceeds on which it is charged; and every agreement, order, or adjustment allowing a greater salvage is void, unless ordered and allowed by the county judge. En. March 12, 1872.

Salvage, seaman's right to: Civ. Code, secs. 2052, 2058, 2059. Deduction for: Sec. 2060. To other persons than mariners: Civ. Code, sec. 2079. In insurance: Civ. Code, sec. 2725.

§ 2405. Owners of wrecked property may reclaim it. Wrecked property may be kept or reclaimed, at the time of the wreck, by the owner, consignee, or other person entitled to the possession; but if any person has a just claim for salvage and necessary expenses incurred in saving it, he must be paid before the property is reclaimed. En. March 12, 1872.

Detaining wrecked property after salvage paid, punishment for: Pen. Code, sec. 544.

§ 2406. Sheriff to keep possession until owner found. The sheriff of every county in which any wrecked property is found, when no owner or other person entitled

to possession appears, must take possession of it in the name of the people, cause the value thereof to be appraised by disinterested persons, and keep it in some safe place to answer the owner's claims. En. March 12, 1872.

Unlawfully taking or retaining possession of wrecked property, and failure to deliver same to sheriff or notify him, is misdemeanor: Pen. Code, sec. 545.

Obligation of finder of property in general: Civ. Code, secs. 1864 et seq., and sec. 3136, post.

§ 2407. **Perishable property.** If it is in a perishable state, the sheriff must apply to the judge of the superior court, upon a verified petition, for an order authorizing him to sell it. If the judge is satisfied that a sale of the property would be beneficial to the parties interested, he must make the order applied for, and the property must then be sold at public auction, at the time and in the manner specified in the order; and the proceeds, deducting the expenses of sale, as the same is settled and allowed by such judge, must be paid to the treasurer of the county. En. March 12, 1872. Am'd. 1880, 21.

§ 2408. **Order for surrender to claimant.** If, within a year after the finding, any person claims the property, or its proceeds, and establishes his claim by evidence satisfactory to the judge of the superior court, such judge must make an order directing the officer in whose possession the property or its proceeds may be, to deliver the same to the claimant, upon the payment of a reasonable salvage and the necessary expenses of preservation. En. March 12, 1872. Am'd. 1880, 22.

§ 2409. **Claimant to first give bond.** Before making the order, the judge must require from the claimant a bond to the people, with one or more sufficient sureties, to be approved by the judge and filed with the county clerk, in a penalty double the value of the property or proceeds, conditioned for the payment of all damages that may be recovered against such claimant or his representatives, within three years after its date, by any person establishing title to the property or proceeds. En. March 12, 1872.

§ 2410. Action on bond. If the bond becomes forfeited, the judge of the superior court, upon the application, supported by proof of the person entitled to the benefit of it, must make an order for its prosecution for such person's benefit, and at his risk and expense. En. March 12, 1872. Am'd. 1880, 22.

§ 2411. Owner may sue, although claim rejected. The rejection by the judge of any claim does not preclude the claimant from maintaining an action for the recovery of such property or its proceeds against the officer. If the plaintiff in any such action prevails, there must be deducted from the damages, in addition to salvage and expenses, all the defendant's costs. En. March 12, 1872.

§ 2412. Salvage to be stated in writing. Every officer to whom an order for the delivery of wrecked property or the payment of its proceeds is directed, must present to the claimant exhibiting it a written statement of the claims for salvage and expenses. If the claimant refuses to allow such amount, it must be adjusted as hereinafter provided. En. March 12, 1872.

§ 2413. Proceedings to settle disputed claims to salvage. If, in any case, the amount of salvage and expenses are not settled by agreement, the superior court of the county, on the application of the owner or consignee of the property, or the master or supercargo having charge thereof at the time of the wreck, or of a claimant having an order therefor, or of a person claiming salvage or expenses, must determine the same in a summary way, either by itself hearing the allegations and proofs of the party, or by referring the questions to three disinterested freeholders of the county, who must have the same powers and must proceed in the same manner as referees in civil actions, and whose decisions as to the whole amount, and as to the sums to be paid to each person interested, must be entered as the judgment of the court. En. March 12, 1872. Am'd. 1880, 22.

Referees in civil actions: Code Civ. Proc., secs. 638-645.

§ 2414. Costs of contest. The fees and expenses of the contest must be paid by the person upon whose applica-

tion it was had, and are a charge on the property saved. Each referee is entitled to such per diem and expenses as the county judge may deem just. En. March 12, 1872.

§ 2415. **Wrecked property not claimed to be sold.** If, within a year after saving wrecked property, no claimant of the property or its proceeds appears, or, if within three months after a claim, the salvage and expenses have not been paid, or a suit for the recovery of the property or its proceeds has not been commenced, the officer in whose custody it may be must sell it at public auction, if not already sold, and pay the proceeds of such sale, deducting salvage and expenses, into the treasury of this state, for the benefit of the parties interested; but in no case must any deduction of salvage and expenses be made, unless the amount has been determined by the superior court of the county, a copy of whose order, and of the evidence in support thereof, must be transmitted by the judge to the controller. If any money paid to a county treasurer, under section twenty-four hundred and seven, remains in his hands more than a year after it has been paid to him, the same must be paid into the state treasury. En. March 12, 1872. Am'd. 1880, 22.

§ 2416. **Notice of sale.** Public notice of every sale of wrecked property under the provisions of this chapter must be published by the officer making the sale for at least two weeks in succession in one or more newspapers printed in the county, or if none is printed therein, then by written or printed notices in three of the most public places in such county, posted up at least fifteen days previous to such sale. Every notice must state the time and place of the sale and contain a particular description of the property to be sold. En. March 12, 1872.

§ 2417. **Notice of wrecked property.** Every sheriff into whose possession any wrecked property comes must immediately thereafter publish, for at least two weeks in succession, in one or more of the newspapers printed in this state, a notice directed to all parties interested, giving a minute description of the property, and of every bale, box, case, piece, or parcel thereof, and of the marks, brands, letters, and figures on each, and stating where the same then is, and its actual condition, and the name,

if known, of the vessel from which it came, her master and supercargo, and the place where such vessel then is, and her actual condition. En. March 12, 1872.

Defacing marks upon wrecked property: Pen. Code, secs. 355, 356.

§ 2418. **Expense of notice.** The expense of publishing notices under the provisions of this chapter is a charge upon the property or proceeds to which it relates. En. March 12, 1872.

ARTICLE V.

PILOTS AND PILOT COMMISSIONERS.

§ 2429. Qualifications of pilots.
§ 2430. Commissions and license.
§ 2431. Pilots to take official oath and give bond.
§ 2432. Vessel, owner, etc., liable for pilotage.
§ 2433. Owners to compensate pilots for loss.
§ 2434. Pilot to show commission or license, when.
§ 2435. Pilots carried to sea or detained.
§ 2436. Pilots for ports other than San Francisco, Mare Island, Benicia, and Humboldt Bay.
§ 2437. Further duties of pilots.
§ 2438. Violating regulations.
§ 2439. Piloting vessels without license.
§ 2440. Pilot commissioners for San Francisco, Mare Island, and Benicia, how appointed.
§ 2441. Pilot commissioners for Humboldt Bay and Bar, how appointed.
§ 2442. Term of office.
§ 2443. Boards to organize, meetings.
§ 2444. Powers of president.
§ 2445. Powers of the boards.
§ 2446. Secretaries of boards, and records.
§ 2447. Not to be interested in pilot boats.

§ 2429. **Qualifications of pilots.** No person must be appointed a pilot unless he is an American citizen, over the age of twenty-one years, with a practical knowledge of the management of sailing vessels and steamboats, and of the tides, soundings, bearings, and distances of the several shoals, bars, rocks, points of land, lighthouses, and fog signals of the ports and harbors for which he is appointed, of good moral character, and temperate, with the skill and ability necessary to discharge the duties of pilot. En. March 12, 1872.

Examination as to qualifications: Post, sec. 2430.

§ 2430. **Commissions and license.** Pilots appointed by commissioners must be carefully examined as to their qualifications, and, if found to be qualified and worthy, must

receive license as pilots for the term of twelve months, which license shall be thereafter annually renewed until the commissioners have good cause to withhold such renewal; and whenever the commissioners deem they have such cause, or intend for any reason to withhold such renewal, the secretary of the board of commissioners shall serve notice, in writing, on such pilot, specifying the causes, at least ten days before the expiration of his license; and such pilot shall thereupon be entitled to a full hearing before said board. En. March 12, 1872. Am'd. 1877-8, 46.

Qualifications: Ante, sec. 2429.

Hearing before board: Post, sec. 2464.

§ 2431. Pilots to take official oath and give bond. Every pilot must execute an official bond in the sum of five thousand dollars, to be approved by the officer or board appointing him. The bonds of pilots appointed by commissioners must be filed with such commissioners. En. March 12, 1872.

Official bond: Ante, secs. 947-987. Liability of pilot on his official bond: Post, sec. 2438.

§ 2432. Vessel, owner, etc., liable for pilotage. All vessels, their tackle, apparel, and furniture, and the master and owners thereof, are jointly and severally liable for pilotage fees, to be recovered in any court of competent jurisdiction. En. March 12, 1872.

§ 2433. Owners to compensate pilots for loss. If any pilot, in endeavoring to assist or relieve any vessel in distress, suffers loss or damage in his boats, sails, tackle, rigging, or appurtenances, the master, owner, or consignee of such vessel must pay the value of such loss or damage, to be ascertained by the commissioners. En. March 12, 1872.

§ 2434. Pilot to show commission or license, when. Every pilot, on boarding a vessel, when required by the master thereof, must exhibit his commission or license as pilot. A refusal so to do subjects him to a forfeiture of his commission or license, and to a recovery of fifty dollars on his bond in a suit instituted for that purpose by the authority appointing him. En. March 12, 1872.

License as pilot: Ante, sec. 2430.

§ 2435. Pilots carried to sea or detained. Every pilot carried to sea against his will, or unnecessarily detained on board of a vessel when a pilot boat is in attendance to receive him, is entitled to receive the sum of eight dollars per day while necessarily absent or detained, not to exceed in the aggregate the sum of one thousand dollars in any one case, which sum may be recovered by action against the master or owner of the vessel so taking him away. En. March 12, 1872.

Act providing pilots for port of Wilmington and harbor of San Pedro: See Stats. 1889, p. 416.

§ 2436. Pilots for ports other than San Francisco, Mare Island, Benicia, and Humboldt Bay. Pilots for all the ports in this state, other than San Francisco, Mare Island, Benicia, and Humboldt Bay, are governed by the following regulations:

1. They must keep, for the purpose of piloting, at least one boat for every six pilots, in good condition, and seaworthy, sufficiently large to cruise in heavy weather, to be exclusively used as a pilot boat.

2. They must cruise at least ten marine miles seaward from the headlands at the entrance of the port.

3. They shall receive for piloting every vessel into or out of port the sum of eight dollars per foot draught.

4. When the person commanding any vessel refuses to take a pilot, the pilot first offering his services is entitled to half pilotage.

5. For incompetency, neglect of duty, or other good cause, the governor may suspend or remove any pilot appointed by him.

6. They must strictly observe and obey all legally established quarantine regulations. En. March 12, 1872.

Act to establish pilots and pilot regulations for San Diego: See Stats. 1871-2, p. 650.

§ 2437. Further duties of pilots. When cruising off or standing out to sea, pilots must go to a vessel nearest to shore, or in the most distress, under a penalty of one hundred dollars; for refusing to go on board a vessel when required, a like penalty of one hundred dollars may be imposed; in either case, upon conviction, the pilot may be suspended or expelled, at the discretion of the commissioners. En. March 12, 1872.

§ 2438. Violating regulations. For every violation of the duties and regulations herein specified, the pilot so violating is liable on his official bond to the party aggrieved to the amount of the damages sustained. En. March 12, 1872.

Official bond of pilot: Ante, sec. 2431.

§ 2439. Piloting vessels without license. Any person not the master or owner, and not holding a commission or license as a pilot, who pilots any vessel into or out of any harbor or port of this state for which there are commissioned or licensed pilots, must be punished therefor as provided in the Penal Code, section 379, and must pay to the pilot entitled to pilot such vessel the amount of pilotage or towage collected by him. En. March 12, 1872.

Unlicensed piloting is misdemeanor: Pen. Code, sec. 379.

§ 2440. Pilot commissioners for San Francisco, Mare Island, and Benicia, how appointed. There must be appointed by the governor, by and with the advice of the senate, three experienced and competent shipmasters or nautical men, citizens of the United States, and residents in either of the cities of San Francisco, Oakland, Vallejo, or Benicia, or of the towns of Brooklyn or Alameda, a board of pilot commissioners for the ports of San Francisco, Mare Island, and Benicia. En. March 12, 1872.

Cal.Rep.Cit. 76, 635; 76, 636; 76, 637; 83, 456.

Pilots for San Diego: See Stats. 1871-2, p. 650.

Pilot regulations for San Francisco, Mare Island, and Benicia: Post, secs. 2457-2470.

§ 2441. Pilot commissioners for Humboldt Bay and Bar, how appointed. There must be appointed by the governor three pilot commissioners for Humboldt Bay and Bar. Two of the persons so appointed must be resident business men, and the other a shipmaster or nautical man, and a resident of Eureka, Humboldt County, who must constitute a board of pilot commissioners for Humboldt Bay and Bar. En. March 12, 1872.

Pilot regulations for Humboldt Bay and Bar: Post, secs. 2476-2491.

San Diego pilots and pilot regulations: Stats. 1871-2, p. 650.

§ 2442. Term of office. The commissioners hold their offices during the pleasure of the power appointing them, not exceeding four years from the date of their commissions. En. March 12, 1872.

Cal.Rep.Cit. 76, 635; 76, 636; 76, 637; 83, 456.

§ 2443. Boards to organize, meetings. The commissioners must organize as boards, respectively, by the election of presidents, secretaries, and treasurers. They must provide for themselves offices, in which they must meet as follows: The "San Francisco board" must meet once a month in the city of San Francisco, and the "Humboldt board" must meet at Eureka on the first Mondays in January, April, July, and October. En. March 12, 1872.

§ 2444. Powers of president. The president of each board is authorized to administer oaths in regard to any matter properly before it, and to issue subpœnas in like cases for witnesses. A witness disobeying such subpœna served on him must pay to the board one hundred dollars, for which judgment may be recovered by the president in a civil action. En. March 12, 1872.

Administration of oaths, etc.: Code Civ. Proc., secs. 2093 et seq.

Subpœnas for witnesses, etc.: Code Civ. Proc., secs. 1985 et seq.

§ 2445. Powers of boards. Each board must make bylaws and rules for the government of pilots appointed by it; and may adjourn their regular meetings from time to time. The Humboldt board must hold a special meeting on notice of one member, published in a newspaper in Humboldt County five days prior to the proposed meeting. The San Francisco board may appoint a secretary and fix his compensation, not to exceed the sum of two hundred and fifty dollars per month. The secretary of the Humboldt board must be one of the members thereof. En. March 12, 1872.

Cal.Rep.Cit. 43, 235.

§ 2446. Secretaries of boards, and records. The secretary of each board must keep a journal of all its proceedings and acts, and a register of all pilots appointed, their residence and date of license; and must, under order of the board, issue licenses to be signed by the president,

and countersign the same. The secretary of the Humboldt board is the treasurer thereof. En. March 12, 1872.

§ 2447. Not to be interested in pilot boats. Neither the commissioners nor their secretaries must have any interest in any pilot boat or steam tug, nor in the earnings thereof, other than for compensation as herein provided. Any one violating this section forfeits his office. En. March 12, 1872.

ARTICLE VI.

PILOT REGULATIONS FOR SAN FRANCISCO, MARE ISLAND, AND BENICIA.

§ 2457. Commissioners to examine and license pilots.
§ 2458. Pilots to keep boats.
§ 2459. Pilots to prevent premature boarding. Arrest of offenders.
§ 2460. To render monthly account of pilotage.
§ 2461. Board may revoke license and suspend pilots.
§ 2462. Causes for revocation.
§ 2463. Complaint against pilot to be verified, and how disposed of.
§ 2464. Trial and review on withholding or revocation of license.
§ 2465. Certain pilotage to be agreed on.
§ 2466. Rates of pilotage at San Francisco.
§ 2467. Exemption from pilotage of certain vessels.
§ 2468. Same. Pilotage and half pilotage.
§ 2469. When two pilots offer services.
§ 2470. Pilot bringing in vessel entitled to take her out.

§ 2457. Commissioners to examine and license pilots. The board of commissioners must examine and license, in the manner prescribed, not less than fifteen nor more than twenty pilots for the port of San Francisco, and not more than two pilots for the ports of Mare Island, Vallejo, and Benicia. En. March 12, 1872. Am'd. 1877-8, 46.

San Diego pilots and pilots' regulations: Stats. 1871-2, p. 650.

§ 2458. Pilots to keep boats. Pilots must at all times keep, for their exclusive use, boats of such description and good condition as directed by the board. En. March 12, 1872. Am'd. 1877-8, 46.

§ 2459. Pilots to prevent premature boarding. Arrest of offenders. Every pilot in charge of a vessel arriving in the port or harbor of San Francisco, must safely moor the vessel in such position as the master of the vessel or harbormaster may direct. He must prevent all persons

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(except officers of the state or federal governments, owners or consignees of the vessel or cargo, and persons admitted on the express order of the master) from boarding such vessel until she has been safely moored. To enforce the provisions of this section, and other police regulations for the harbor, every pilot in charge of a vessel entering the harbor of San Francisco is authorized and empowered to arrest every one who, in opposition to the master's orders, persists in boarding such vessel, or who, having boarded her, refuses to leave on the command of such master or pilot; when so arrested he must be immediately brought before the police judge's court, or admitted to bail, as provided in the Penal Code. En. March 12, 1872.

§ 2460. To render monthly account of pilotage. Every pilot of the harbor of San Francisco, Mare Island, Vallejo, and Benicia must once in each month, upon blanks to be furnished them by the board of pilot commissioners, render a verified account to the board of all moneys received by him, or by any other person for him, or on his account, and pay five per cent thereof to the board, in full compensation for its official services, for the services of its secretary and treasurer, and all incidental expenses. Such account shall give the name of each vessel piloted, and the master thereof, and of each vessel for which pilotage has been charged or collected, and the amount charged to or collected from each, and any rebates made and allowed and the amounts thereof, where the same is registered, the depth of its draught, its tonnage, whether inward or outward bound, and whether the amount so received, collected, or charged is for full pilotage or half pilotage, and the secretary shall record such account in full detail in a book prepared for that purpose, which book shall at all times be open to public inspection. En. March 12, 1872. Am'd. 1899, 6.

§ 2461. Board may revoke license and suspend pilots. The board has power summarily to suspend pilots for misconduct, inattention to their duty, intoxication, or violation of any of the rules and regulations provided by the board for the government of pilots, and to revoke the license of pilots for the causes hereinafter mentioned, upon due proof thereof, as hereinafter provided. The board must immediately suspend every pilot complained of until

the complaint is investigated and decided. En. March 12, 1872.

§ 2462. **Causes for revocation.** Any pilot may be deprived of his license before its expiration for the following causes only:

1. For neglect, for thirty days after the same becomes due, as provided in the second preceding section, to render an account to the board of pilot commissioners of all moneys received by him for pilotage;

2. For neglect, for thirty days after the same becomes due, to pay over to the board the five per cent on the pilotage money received by him;

3. For rendering to the board a false account of pilotage received;

4. For absenting himself from duty for more than one month at any one time, except upon leave granted by the board, or by reason of sickness or personal injury;

5. For refusing to exhibit his license when requested to do so by the master of any vessel he may have boarded;

6. For habitual or occasional intoxication, whether the same occurs while in charge of any vessel as pilot or in charge of a pilot boat, or at any other time;

7. For negligently, ignorantly, or willfully running any vessel on shore, or otherwise rendering her liable to injury. Any pilot deprived of his license under this subdivision is thereafter ineligible to receive a license as pilot.

8. For willful violation of the rules and regulations adopted by the board of commissioners for the government of pilots. En. March 12, 1872.

§ 2463. **Complaint against pilot to be verified, and how disposed of.** No complaint against any pilot for any of the charges specified in the preceding section must be entertained by the board, unless it is within the knowledge of the commissioners, or reduced to writing and verified, as in civil actions. When a written complaint is filed, the pilot accused must be forthwith served with a copy thereof by the secretary, and required to appear and answer within ten days thereafter. If, upon the hearing of a complaint and the testimony in relation thereto, the board adjudges the complaint well founded, and the pilot guilty of any of the acts or causes herein declared suf-

ficient for depriving him of his license, the board must by order so declare, and forthwith revoke his license. Such order must be entered of record in the minutes by the secretary. En. March 12, 1872.

§ 2464. Trial and review on withholding or revocation of license. Whenever any pilot has been notified that his license will not be renewed, as provided in section two thousand four hundred and thirty of this code, he shall be entitled to a trial and hearing thereon, in the same manner that other charges and complaints are tried under the provisions of section two thousand four hundred and sixty-three of this code, and in all such cases, and in all cases of revocation of license, or suspension of a pilot for any cause, the board may, in its discretion, upon written application, setting forth the grounds thereof, verified by the party aggrieved, grant a rehearing; and in all cases the final decision of the board shall be subject to review in the superior court of the city and county of San Francisco, to which court any such case, with all the papers and proceedings therein, shall be immediately certified by the secretary of said board, when so required by the pilot interested therein. Any case so certified to the superior court shall be then tried de novo. The judgment of the court shall be final and conclusive. If the decision of the board be reversed, the judgment shall operate directly to restore the pilot to all his former rights, status, and privileges without further action of the board. But the board shall, nevertheless, upon being served with a certified copy of such judgment, restore or renew the license of such pilot, as the judgment may direct. En. March 12, 1872. Am'd. 1877-8, 46; 1881, 85.

§ 2465. Certain pilotage to be agreed on. The pilotage inside the heads to the anchorage opposite San Francisco and about the harbor, or between the harbor of San Francisco and the ports of Mare Island, Vallejo, or Benicia, must be at such rates as agreed on between the parties, not to exceed five dollars per foot draught. En. March 12, 1872.

§ 2466. Rates of pilotage at San Francisco. The following shall be the rates of pilotage into or out of the harbor of San Francisco: All vessels under five hundred tons, five dollars per foot draught; all vessels over five

hundred tons, five dollars per foot draught, and four cents per ton for each and every ton registered measurement. When a vessel is spoken, inward or outward bound, and the services of a pilot are declined, one half the above rates shall be paid. In all cases where inward bound vessels are not spoken until inside of the bar, the rates of pilotage and one half pilotage above provided shall be reduced fifty per cent. Vessels engaged in the whaling or fishing trades shall be exempt from all pilotage, except where a pilot is actually employed. En. March 12, 1872. Am'd. 1877-8, 47.

§ 2467. Exemption from pilotage of certain vessels. Any vessel in tow of a steam tug, between the harbor of San Francisco and the ports of Mare Island, Vallejo, or Benicia, shall be exempt from all charges for pilotage, unless a pilot be actually employed. En. March 12, 1872. Am'd. 1877-8, 47.

§ 2468. Same. Pilotage and half pilotage. All vessels sailing under an enrollment, and licensed and engaged in the coasting trade between the port of San Francisco and any other port of the United States, shall be exempt from all pilotage, unless a pilot be actually employed. All foreign vessels, and all vessels from a foreign port or bound thereto, and all vessels sailing under a register between the port of San Francisco and any other port of the United States, shall be liable for pilotage and half pilotage, as provided in section two thousand four hundred and sixty-six of this code. En. March 12, 1872. Am'd. 1877-8, 47; 1891, 496.

§ 2469. When two pilots offer services. When two or more pilots shall offer their services to any vessel inward bound, the pilot first offering, or one connected with the same boat, shall have preference, and if the services of another be accepted, the vessel, her appurtenances, and the master and owner thereof, shall be jointly and severally liable to the pilot entitled to such preference for one half the amount of pilotage he would have been entitled to had his services been accepted. En. Stats. 1877-8, 47.

§ 2470. Pilot bringing in vessel entitled to take her out. Any pilot bringing a vessel into the harbor of San Francisco (or one connected with his boat) shall be entitled to take such vessel to sea again when she next departs;

provided, such pilot and those connected with his boat have not in the mean time become in any manner disqualified or incapacitated; and if such preference be disregarded by the master of such vessel, the vessel, master, and owner shall be liable to the pilot entitled to such preference for one half the amount to which he would be entitled if his services had been accepted. En. Stats. 1877-8, 47.

Cal.Rep.Cit. 43, 231.

ARTICLE VII.

PILOT REGULATIONS FOR HUMBOLDT BAY AND BAR.

§ 2476. Board to appoint and remove pilots.
§ 2477. To make rules to govern themselves and pilots.
§ 2478. Pilots to be attached to steamboats. Damages.
§ 2479. Pilot having priority.
§ 2480. Pilotage and towage.
§ 2481. Pilot responsible for loss or detention of vessel.
§ 2482. Commissioners to recover forfeitures, etc.
§ 2483. Compensation of commissioners.
§ 2484. Secretary to publish receipts.
§ 2485. Pilots to observe regulations.
§ 2486. License, how forfeited.
§ 2487. Pilot losing vessel.
§ 2488. Extra services.
§ 2489. Full pilotage.
§ 2490. Further fees.
§ 2491. Claims against board.

§ 2476. Board to appoint and remove pilots. The Humboldt board may appoint for Humboldt Bay and Bar such number of pilots as are necessary, subject to be removed by the board at any time. En. March 12, 1872.

San Diego pilots and pilot regulations: Stats. 1871-2, p. 650.

Act to improve Humboldt Bay: See General Laws, title Humboldt Bay.

§ 2477. To make rules to govern themselves and pilots. The commissioners may make by-laws and rules for their own government and for the government of the pilots, and fix penalties for the breach of the same—a copy whereof they must furnish each pilot appointed. They may also suspend or revoke the licenses of pilots appointed by them, for incapacity or misconduct. En. March 12, 1872.

Cal.Rep.Cit. 43, 231.

§ 2478. Pilots to be attached to steamboats. Damages. All pilots licensed or appointed for Humboldt Bay must

be attached to a steamboat well furnished and fitted for the service, having the necessary hawsers and spring lines suitable to cross and tow vessels over Humboldt Bar in ordinarily rough weather. Any damage to a vessel in tow of a pilot boat, resulting from negligence or carelessness, may be recovered of the pilot boat, its owners, or the pilots in charge thereof at the time the injury occurred; they are jointly and severally liable therefor. En. March 12, 1872.

§ 2479. **Pilot having priority.** The pilot who brings any vessel into the port has priority in piloting or towing the same out, and the master of the vessel outward bound must apply for pilotage or towage on board the pilot boat which brought the vessel in, and tender the pilotage or towage fee. Such pilot, or a suitable substitute, must immediately render the required service, and for a failure so to do forfeits his appointment. If the pilot, in bringing the vessel in, was guilty of negligence or carelessness, he thereby forfeits his right of priority. En. March 12, 1872.

§ 2480. **Pilotage and towage.** The following fees are collectible by the pilots of Humboldt Bay:

1. For piloting vessels, eight dollars per foot draught.
2. For towage, an amount to be agreed upon between the parties. En. March 12, 1872.

§ 2481. **Pilot responsible for loss or detention of vessel.** If any vessel bound for Humboldt Bay is lost or unnecessarily detained for want of a pilot or steam tugboat, after raising a signal for a pilot within eight miles of the bar at the entrance of the bay, the pilots may be suspended or displaced by the commissioners, and those guilty of negligence or inattention must pay to the commissioners a sum not exceeding five hundred dollars, to be recovered in a suit by them, and are liable to the owners of the lost or detained vessel in the amount of damage resulting from such negligence or inattention. The commissioners must publish all proceedings had in such cases. En. March 12, 1872.

§ 2482. **Commissioners to recover forfeitures, etc.** The commissioners must sue for and recover all penalties and forfeitures from pilots, masters, or owners of vessels, or other persons, or from the vessels violating any of the pro-

visions of this article. The money so collected must be paid into the county treasury of Humboldt County, for the use of the public schools, the commissioners first deducting therefrom, if sufficient, enough to defray their salaries and necessary expenses. En. March 12, 1872.

§ 2483. Compensation of commissioners. The commissioners must each receive the sum of four dollars per day for each day actually employed in the discharge of their duties, and all necessary expenses for stationery, lights, and fuel used in their office, which sum must be deducted from the moneys received by them before depositing the same in the county treasury. En. March 12, 1872.

§ 2484. Secretary to publish receipts. On the first week in January of each year, the secretary of the board must cause to be published in a newspaper published in Humboldt County, a full account of all the receipts and expenditures for the year previous. En. March 12, 1872.

§ 2485. Pilots to observe regulations. The commissioners of Humboldt Bay and Bar must strictly observe and enforce the following regulations:

1. A pilot absenting himself from his duty for more than two months forfeits his license.
2. Each pilot must apply for a renewal of his license ten days before the expiration thereof, otherwise it must not necessarily be renewed.
3. If a pilot becomes intoxicated while in charge of a vessel as pilot, he must be suspended or dismissed and his license withdrawn. En. March 12, 1872.

§ 2486. License, how forfeited. Licenses of pilots are forfeited, and must be withdrawn by the board of commissioners in the following cases:

1. A failure to renew his bond or sureties when required by the board.
2. Willful violation of any duty prescribed by law, or a regulation of the board.
3. Negligently losing a vessel.
4. Mental derangement.
5. Habitual drunkenness.

Notice of any charge must be given to the pilot accused, and an opportunity to defend himself given before his removal. En. March 12, 1872.

§ 2487. Pilot losing vessel. A pilot negligently losing a vessel must not thereafter receive a license as a pilot, and is liable for all damages sustained in consequence of such neglect. If a pilot negligently runs a vessel on shore, he must receive no pilotage; and he is liable on his bond for all damages sustained. En. March 12, 1872.

§ 2488. Extra services. The master, owner, or consignee of any vessel to whom any pilot may have rendered, upon request of either of them, any extra service for the preservation of such vessel while in distress, must pay such pilot, in addition to his regular fees, such amount as the commissioners determine to be a reasonable and just reward, if no special agreement has been made between such master, owner, or consignee of such vessel and the pilot. En. March 12, 1872.

§ 2489. Full pilotage. A pilot boarding any vessel displaying a signal for a pilot is entitled to receive full pilotage. En. March 12, 1872.

§ 2490. Further fees. The commissioners are entitled to charge for each license to a pilot a sum not exceeding fifty dollars; and any master of a coasting vessel, being an American citizen, can, upon application to the pilot commissioners, obtain a special license for the use of such vessel only, by paying the commissioners for the same at the rate of one dollar per ton; all such vessels must be under one hundred and seventy-five tons burden. En. March 12, 1872.

§ 2491. Claims against board. All claims against the commissioners must be considered at a stated meeting, and if correct must be allowed and paid. En. March 12, 1872.

ARTICLE VIII.

PORT WARDENS.

§ 2501. Number of port wardens.
§ 2502. Board for San Francisco.
§ 2503. Duty of wardens.
§ 2504. To keep open record.
§ 2505. Surveys, and what same must set forth.
§ 2506. May call assistance, but no charge therefor.
§ 2507. Sales of wrecks, etc., and merchandise for foreign underwriters.
§ 2508. Notice of sale, how given.
§ 2509. Wardens not to be connected with insurance.
§ 2510. Fees for surveys and certificates.
§ 2511. Penalty for acting as port warden.

§ 2501. Number of port wardens. There are four port wardens for the port and harbor of San Francisco, and one for each and every other port of entry within this state. En. March 12, 1872.

§ 2502. Board for San Francisco. Of the wardens appointed in San Francisco two or more must be master mariners. They must act in concert in the discharge of their duties, and are known as the board of port wardens for the port of San Francisco. En. March 12, 1872.

§ 2503. Duty of wardens. The port wardens, when required by any person interested in either vessel or cargo, must survey any vessel arriving in distress, or which has sustained damage or injury at sea, and survey in whole or in part the cargo thereof; and must survey the hatches, stowage, and cargo of all vessels laden with general or assorted merchandise belonging or consigned to various parties. En. March 12, 1872.

§ 2504. To keep open record. They must keep in a book provided for such purpose a record of all surveys, signed by the warden making the survey, at all times open for inspection by any person interested in the vessel or cargo surveyed, of which all persons requiring them must be furnished with copies certified under the hand of the warden or one of the board of wardens and seal of the board, on payment of the fee therefor. En. March 12, 1872.

Cal.Rep.Cit. 123, 320.

§ 2505. Surveys, and what same must set forth. In all surveys made by a port warden he must set forth clearly and fully the nature of the damage; if of merchandise,

whether from actual contact with sea water or through the excess of water in the hold of the vessel, or from the humidity or sweat of the hold, bad stowage, or from such other cause by which in his judgment the damage has been occasioned. If the survey is of a damaged vessel he must give a full account of all the loss and injury which she has sustained, and recommend the repairs. He must state the value of the vessel in her damaged condition, and also the value of the repairs recommended, setting forth what parts are to be supplied anew and what parts to be put in repair. En. March 12, 1872.

§ 2506. May call assistance, but no charge therefor. Whenever a port warden deems it necessary he may call to his assistance, on a survey, a ship carpenter, rigger, sailmaker, or other person practically acquainted with the merchandise to be surveyed or parts of the vessel to be repaired, who must be sworn to examine properly and to render with the warden a correct and faithful report of the surveys. No additional charge must be made therefor to the vessel unless their survey is required by the owner or agent thereof. En. March 12, 1872.

§ 2507. Sales of wrecks, etc., and merchandise for foreign underwriters. All wrecked or damaged vessels, or materials from the same, and all merchandise sold at public auction for account of underwriters residing abroad, when required by any party having an interest in the same, or for account of whom it may concern, or upon which claims are to be made against underwriters residing abroad, must be sold under the inspection of a warden of the port where such sale is made. And the warden must separate sound goods from those damaged, and certify specially the nature, and, as far as can be done, the extent of such damage. No port warden has authority to sell or dispose of any property that may have been surveyed by him without the consent of the owner or agent of the same; nor when the settlement of losses has been agreed upon in writing by the parties interested and a copy thereof given to the warden. En. March 12, 1872.

Marine insurance: Civ. Code, secs. 2655-2746. Loss: Civ. Code, secs. 2701-2712. Abandonment: Civ. Code, secs. 2716-2732. Measure of indemnity: Civ. Code, secs. 2736-2746.

Wrecks and wrecked property: See ante, art. IV, secs. 2403 et seq.

§ 2508. Notice of sale, how given. In case sales are made at auction under the direction of the port warden, he must give at least three days' notice of the same by publication in some newspaper published in the county where the survey is made, describing the articles to be sold; and if merchandise, the vessel by which imported; and if a wrecked or damaged vessel or materials of the same, the name of the vessel and where from. If no newspaper is published in the place where the same is made, then a written notice of such sale must be posted up in the vicinity. En. March 12, 1872.

§ 2509. Wardens not to be connected with insurance. No port warden must, either directly or indirectly, have any connection with insurers of this state, or of any other of the states, or of foreign countries, or with the agents or representatives of such insurers, so far as his duties as port warden are concerned. He must not in any manner be interested, directly or indirectly, in any repairs he may recommend, nor in any vessel, cargo, or portion of cargo, he may be required to survey. En. March 12, 1872.

§ 2510. Fees for surveys and certificates. For each and every survey the port warden is entitled to fifteen dollars, to be paid by the owners, masters, or consignees, the amount not to exceed altogether for any one vessel the sum of seventy-five dollars. Foreign vessels, not admitted by treaty on terms of equality with American bottoms, must pay fifty per cent advance on this rate. For all separate certificates of surveys required by different consignees he is entitled to a fee of two dollars and a half, and for each order of sale he is entitled to ten dollars. En. March 12, 1872.

§ 2511. Penalty for acting as port warden. Any person other than a port warden, appointed according to law, who performs any of the duties of such officer prescribed in this article is liable to a penalty of not less than five hundred dollars nor more than one thousand dollars for each offense, to be recovered in any court of competent jurisdiction by the warden or board of port wardens, in the

name of the people of the state of California. En. March 12, 1872.

Exercising functions of office wrongfully: Pen. Code, sec. 75.

ARTICLE IX.

SAN FRANCISCO HARBOR AND STATE HARBOR COMMISSIONERS.

§ 2520. Appointment of state harbor commissioners.
§ 2521. Bonds. Employees.
§ 2522. Employees and their duties.
§ 2523. Actions for property, money, and removal of obstructions.
§ 2524. Jurisdiction of board.
§ 2525. Extension and supervision of streets along water front.
§ 2526. Limit of money to be collected.
§ 2527. Requisites of valid contract.
§ 2528. Disposition of moneys collected.
§ 2529. Vouchers, drafts, and warrants.
§ 2530. Reports and receipts.
§ 2531. Ex-officio members of board.
§ 2532. New sea wall for San Francisco Harbor.
§ 2533. San Francisco Harbor improvement fund.
§ 2534. Limit of compensation for collecting dockage, etc., (Repealed.)
§ 2535. State treasurer's receipts, disbursements, and account books.
§ 2536. Proposals and contracts for construction of new sea wall.
§ 2537. Report of commissioners to governor.
§ 2538. Maps of changes in lines of water front or streets.
§ 2539. Office and duties of chief wharfinger.
§ 2540. Duties of chief wharfinger as to abandoned watercraft and boats adrift.
§ 2541. Failure to obey orders of chief wharfinger.
§ 2542. Obstructions to navigation.
§ 2543. Fast driving on wharves prohibited.
§ 2544. Police judge's court to try misdemeanors hereunder.
§ 2545. Qualifications of officers.
§ 2546. Obligee on official bonds.
§ 2547. Seal.
§ 2548. When no tolls or wharfage to be collected.
§ 2549. Collections and payments in gold and silver coin only.
§ 2550. Wharfingers and collectors as special policemen.
§ 2551. Pending actions and proceedings not affected.
§ 2552. Salaries of officers.
§ 2553. Duties of attorney-general.
§ 2554. Office rooms. (Repealed.)

§ 2520. Appointment of state harbor commissioners. A board of state harbor commissioners, to consist of three persons, is hereby constituted, with such powers and duties as are prescribed by law. On the passage of this act, the governor must nominate and, by and with the consent of the senate, appoint, one of said commissioners to hold office for two years, one for three years, and one for four years, from the dates of their respective commissions, and

until their successors are qualified. The said officers must thereafter be nominated by the governor, and by and with the consent of the senate, be appointed for four years from the dates of their respective commissions, and until their successors are qualified. If the term of office of any commissioner expire during the recess of the senate, the governor must grant a commission to his successor, which shall be valid to all intents and purposes, subject, however, to the consent of the senate at its next regular session. If a vacancy occur from any cause in the office of a commissioner before the expiration of his term, his successor must be appointed and hold office only for the unexpired portion of such term. In case the senate, during its session, fail to act on or refuse its consent to any nomination the governor may make of persons to constitute the board herein first provided for, or to fill a vacancy occurring thereafter by expiration of the term or otherwise, he must, after the adjournment of the senate, grant a commission for the terms herein provided for, or for the unexpired portion of such term, as the case may be, subject, however, to the consent of the senate at its next regular session; provided, that upon the passage of this act, the governor shall nominate three persons to fill such offices for the first term and submit them to the senate at least one day before its final adjournment. The commissioner first appointed for four years, and thereafter his successors, shall be the president and executive officer of the board. It shall be his duty to preside at its meetings, to supervise the official conduct of all its officers and employees, especially in the collection, custody, and disbursement of the revenues, and to require that all the books, papers, and accounts be accurately kept and in proper form, and all the provisions of law and the regulations of the board be enforced and observed. He may administer official oaths to the officers and employees of the board, except the other commissioners, and to all other persons in relation to the business of the board. En. Stats 1875-6, 32. Am'd. 1883, 48.

Cal.Rep.Cit. 63, 339; 111, 583.

Harbor commissioners, ex-officio members: Sec. 2531.

Various acts relating to: See post, Appendix, title Harbor Commissioners.

§ 2521. Bonds. Employees. The president of the board must give an official bond in the sum of fifty thousand

dollars, and each of the other commissioners in the sum of fifty thousand dollars, which must be approved by the governor and state treasurer by written indorsement thereon, and within fifteen days after the date of their respective commissions must be filed and recorded in the office of the secretary of state, together with the official oath prescribed by law. The commissioners shall not be sureties for one another, nor shall any officer of the state, nor any officer or member of the legislature, be accepted as surety on said bonds. As soon as the commissioners first appointed under this act have qualified, the offices of the present commissioners shall be and are hereby declared to be vacant. The board, on entering on the duties of their office, must appoint the following officers, viz.: A secretary, an assistant secretary, an attorney, a chief engineer, a chief wharfinger, and such number of wharfingers and collectors as they deem necessary. Such officers shall hold for a term of four years from the dates of their respective appointments, but may be removed by the board at any time, after due investigation, for causes affecting their official character or competency. The order for such removal, stating distinctly the causes therefor, must be entered on their minutes. In case of a vacancy in such offices by the expiration of a term, or for any other cause, the board must fill the same by an appointment for four years. En. March 12, 1872. Am'd. 1875-6, 32; 1883, 49.

Cal.Rep.Cit. 47, 447; 81, 20; 81, 28; 81, 32; 81, 35; 81, 36; 81, 37; 85, 414.

Official bonds generally: Ante, secs. 947-987. Required by this article to be to the people of state: Post, sec. 2546.

Ex-officio members of board: Post, sec. 2531.

Official oath: Ante, secs. 904-910.

Seal of board: Post, sec. 2547.

Qualifications of officers: Post, sec. 2545.

§ 2522. Employees and their duties. The secretary must keep the office of the board open every day, legal holidays excepted, from nine o'clock A. M. till four o'clock P. M. He shall safely keep and be responsible for all moneys paid into the office, and for all the books and papers of the board, attend their meetings and keep a perfect record of their proceedings, with the names of the commissioners present thereat. He must keep in proper books an account of all moneys received and paid, and on

or before the fifth day of each month must send to the state controller a statement thereof, under oath, for the preceding month, showing the sources from which such moneys were received, and the purposes for which they were paid, and must also report to the controller the amount paid to the state treasurer for the month covered by such statement. He must enter daily, in proper wharf-books, the returns made by the wharfingers and collectors, and, on the last day of each month, settle the accounts of each of them, and balance the said books as soon as possible thereafter. When money is received from any source, he must retain a stub corresponding in number, date, and amount, with the receipt given therefor, and he must require the person paying it to sign said stub. He must record, at length, all contracts and agreements made by the board, and keep a record of all personal property purchased, and its cost; and in case any be sold, the name of the purchaser, date of sale, and the price received therefor. Before entering on the duties of his office, he must give an official bond in the sum of fifty thousand dollars, and take and subscribe an official oath. Said bond must be approved by the board, by written indorsement thereon, and be filed with such oath in the office of the secretary of state. The assistant secretary shall attend at the office during office hours, and must perform such service as may be required of him by the secretary or the board. Before entering on the duties of his office, he must give an official bond, in the sum of twenty thousand dollars, and take and subscribe an official oath. Said bond must be approved by the board by written indorsement thereon, and be filed with such oath in the office of the secretary of state. The attorney shall attend to the prosecution and defense of all suits, and render such legal service as may be required of him by the board. The chief engineer must prepare such plans and specifications as the board may direct, and if adopted, and the work ordered by the board to be done, must superintend its construction. He must give constant attention to the condition of the sea wall and thoroughfare, of the sheds, wharves, piers, and landings, of the streets or parts thereof under the jurisdiction of the board, and when repairs are needed, must forthwith report to the board, in writing, their nature and extent, and if ordered by the board, must

have the same done at once. He must keep himself informed as to the depth of water in the various docks and slips, and report to the board, from time to time, what dredging is required. He must keep a register, properly indexed, showing the date, place, and character of every piece of work done and dock dredged, when begun and when finished, with proper descriptions and drawings. He must take and subscribe an official oath, and give a bond in the sum of ten thousand dollars, to be approved by the board by written indorsement thereon. Said bond and oath must be filed in the office of the board. The chief wharfinger must station, berth, and regulate the position of vessels in the docks and harbor, and cause them to remove from time to time, and from place to place, as the general convenience, safety, and good order may require. Subject to such regulation, he must assign berths to vessels in the order of their application after entering the harbor. He must supervise the wharfingers, and report to the board all cases of failure to perform their duties, and require all shipmasters, consignees, pilots, and masters of towboats to conform to the regulations of the board. He must require the docks, slips, wharves, piers, and other premises under the jurisdiction of the board to be kept free of all obstructions, and when parties fail to obey his order to remove the same, he must forthwith report the fact to the board, and execute their orders in relation thereto. He must take and subscribe an official oath, and give such official bond as the board may require, subject to their approval, to be indorsed thereon. Said bond and oath must be filed in the office of the board. The wharfingers shall have supervision of the wharves to which they are assigned, and must require the regulations of the board and orders of the chief wharfinger to be respected and obeyed, and good order be preserved thereon. The collectors must collect the revenues in such manner as the board may direct, and must daily account for and pay all moneys into the office. The wharfingers and collectors must each take and subscribe an official oath, and give such official bond as the board may require, subject to their approval, to be indorsed thereon; said bond and oath to be filed in their office. All the above-named officers must perform such other duties pertaining to their positions as the board may from time to time prescribe. The board

may, in its discretion, employ an assistant to the chief engineer, an assistant to the chief wharfinger, a draftsman, a superintendent of dredgers, and such men on the dredgers, scows, towboats, and fireboats, and in doing urgent repairs, as they deem advisable, and prescribe their bonds, duties, and compensation; such employees shall hold their positions and be removable at the pleasure of the board; but no officer or employee of the board shall be removed or otherwise prejudiced for refusing to contribute to any political fund, or to render any political service; nor shall the board, collectively or individually, use their official influence to coerce the political action of any such officers and employees. Nor shall the state dredgers be employed to dredge slips not under the control of the state, nor private work of any character. En. March 12, 1872. Am'd. 1875-6, 33; 1883, 50; 1887, 222.

Cal.Rep.Cit. 81, 23; 81, 32; 81, 33; 90, 187; 95, 77; 118, 609.

§ 2523. **Actions for property, money, and removal of obstructions.** The commissioners may institute and prosecute to final judgment, actions in the name of the people of the state of California, for the possession of any portion of the premises described in this article, situate between the inshore line, or line nearest the main line, and the line off-shore six hundred and fifty feet therefrom, and parallel therewith, or for the annulling of any lease or contract entered into by the commissioners in behalf of the state, by virtue of any general or special law, or for the collection of any money due, or that may become due the state by authority of this article; and the commissioners may also institute and prosecute to final judgment, actions for the removal of all unlawful obstructions in or upon said premises, or for the removal of all unlawful obstructions in or upon the streets through the center of which the inshore line, or line nearest the main land, bounding said premises, runs. They may also remove any unlawful obstructions thereon after the owner, possessor, or occupant of such obstructions shall have five days' notice, in writing, to remove the same, either served on such owner, possessor, or occupant, or posted upon said obstruction by the chief wharfinger, assistant wharfinger, or wharfinger. En. March 12, 1872. Am'd. 1875-6, 35.

Cal.Rep.Cit. 95, 77; 130, 448.

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§ 2524. **Jurisdiction of board.** The commissioners shall have possession and control of that portion of the bay of San Francisco, together with all the improvements, rights, privileges, easements, appurtenances connected therewith, or in anywise appertaining thereto, for the purposes in this article provided (excepting such parcels thereof as are held by the lessees, or their assigns, on valid leases, which parcels so held it is hereby made the duty of the commissioners to take possession of, together with the improvements thereon, as soon as said leases terminate, and also to see that the lessees, or their successors or assigns, do not exercise rights and privileges that are not conferred by said leases), bounded as follows, to wit: Commencing at the point where the easterly line of the Presidio reservation intersects the water-line front, as established by the board of state tide land commissioners; thence easterly along said water-line front to the center of Webster Street; thence southerly along the center of Webster Street to the center of Lewis Street; thence easterly along the center of Lewis Street to the center of Polk Street; thence southerly along the center of Polk Street to the center of Tonquin Street; thence easterly along the center of Tonquin Street to the center of Larkin Street; thence southerly along the center of Larkin Street to the center of Jefferson Street; thence easterly along the center of Jefferson Street to the center of Powell Street; thence southerly along the center of Powell Street to the center of Beach Street; thence easterly along the center of Beach Street to the center of Dupont Street; thence southerly along the center of Dupont Street to the center of North Point Street; thence easterly along the center of North Point Street to the center of Kearny Street; thence southerly along the center of Kearny Street to the center of Francisco Street; thence easterly along the center of Francisco Street to the center of Montgomery Street; thence southerly along the center of Montgomery Street to the center of Chestnut Street; thence easterly along the center of Chestnut Street to the center of Sansome Street; thence southerly along the center of Sansome Street to the center of Lombard Street; thence easterly along the center of Lombard Street to the center of Battery Street; thence southerly along the center of Battery Street to the center of Greenwich Street; thence

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easterly along the center of Greenwich Street to the center of Front Street; thence southerly along the center of Front Street to the center of Vallejo Street; thence easterly along the center of Vallejo Street to the center of Davis Street; thence southerly along the center of Davis Street to the center of Pacific Street; thence easterly along the center of Pacific Street to the westerly line of East Street; thence southerly along the westerly line of East Street to the center of Folsom Street; thence westerly along the center of Folsom Street to the center of Steuart Street; thence southerly along the center of Steuart Street to the center of Harrison Street; thence southerly on a direct line with said Steuart Street two hundred and fifty-three feet nine inches, to the center of a street the name of which is not on a map; thence at right angles westerly along the center of said street to the center of Spear Street; thence southerly along the center of Spear Street to the center of Bryant Street; thence westerly along the center of Bryant Street to the center of Beale Street; thence southerly along the center of Beale Street to the center of Brannan Street; thence westerly along the center of Brannan Street to the center of First Street; thence southerly along the center of First Street to the center of Townsend Street; thence westerly along the center of Townsend Street five hundred and fifty feet, to the center of a street the name of which is not on a map; thence at right angles southerly along the center of said street to the center of King Street; thence westerly along the center of King Street to the center of Second Street; thence southerly along the center of Second Street to the center of Berry Street; thence westerly along the center of Berry Street to the center of Third Street; thence southerly along the center of Third Street to the northerly line of Channel Street; thence westerly along the last-mentioned line to the easterly line of Fifth Street; thence southerly along said last-mentioned line to the southerly line of said Channel Street; thence easterly along said last-mentioned line to the center of Kentucky Street; thence southerly along the center of Kentucky Street to the center of Fourth Street; thence along the center of Fourth Street to the center of Louisiana Street; thence southerly along the center of Louisiana Street to the center of El Dorado Street; thence westerly along the center of

El Dorado Street to the center of Illinois Street; thence southerly along the center of Illinois Street to the center of Solano Street; thence easterly along the center of Solano Street to the water front line established by the board of state tide land commissioners; thence southerly along said last-mentioned line to the center of Tulare Street; thence westerly along the center of Tulare Street to the center of Texas Street; thence southerly along the center of Texas Street to the center of Islais Street; thence easterly along the center of Islais Street to the center of Waterfront Street; thence southerly along the center of Waterfront Street to the center of India Street; thence westerly, southerly and easterly along the center of said India Street to the center of Waterfront Street, to the center of China Street; thence westerly along the center of China Street to the center of Third Avenue; thence southerly along the center of Third Avenue to the northerly line of the property of the California Dry Dock Company; thence easterly along said last-mentioned line to the water-front established by the board of state tide land commissioners; thence southerly along and around said dry dock company's land to the southeasterly corner thereof; thence westerly along the line of said land to the center of Waterfront Street; thence southerly along the center of Waterfront Street to the center of Nineteenth Avenue; thence westerly along the center of Nineteenth Avenue to the center of Dock Street; thence southerly along the line of Dock Street to the center of Twenty-third Avenue; thence westerly along the center of Twenty-third Avenue to the center of H Street; thence southerly along the center of H Street to the center of Twenty-fourth Avenue; thence easterly along the center of Twenty-fourth Avenue to the center of Waterfront Street; thence southerly along the center of said Waterfront Street to the southern boundary of the city and county of San Francisco; thence along the southerly, easterly, and northerly boundary lines of said city and county to a point due north of the place of commencement, and thence south to the place of commencement. But no harbor embankment or sea wall shall be constructed outside of the following named points and lines, to wit: Commencing at the point where the eastern boundary line of the Presidio reservation, extended in a northerly direction. intersects the three-fathom contour line shown upon

the chart of the United States survey, and running thence in an easterly and southerly direction, upon straight or curved lines, in such manner as to approach as near as practicable the extreme outer projections of the water-line front, as described in an act to provide for the disposition of certain property of the state of California, passed March twenty-sixth, in the year of our Lord eighteen hundred and fifty-one, to a point at or near the intersection of Second and Berry streets; thence continuing southerly, upon straight or curved lines, in such a manner as to approach as near as practicable the extreme outer projections of the water-line front, as established by the board of state tide land commissioners, to the southerly boundary of said city and county of San Francisco; and said commissioners, in addition to a general control over said premises shall have authority to use, for loading and landing merchandise, with a right to collect dockage, wharfage, and tolls thereon, such portion of the streets of the city and county of San Francisco, ending or fronting upon the waters of said bay as may be used for such purposes without obstructing the same as thoroughfares; and authority to rent an office in the city and county of San Francisco, between Montgomery, Market, and Pacific streets and the city front; and purchase from time to time suitable books for the records of the secretary and accounts of the wharfingers, together with such stationery as may be required by the board; and to fix and regulate, from time to time, the rates of dockage, wharfage, cranage, tolls and rents; and collect such an amount of revenue therefrom as will enable the commissioners to perform the duties required of them by authority of this article; and the commissioners, the governor of California, and the mayor of the city and county of San Francisco may so modify and establish such rates of dockage and wharfage as will produce a revenue not to exceed in amount the moneys collected in the year eighteen hundred and seventy-five, collecting as near as possible equal amounts from dockage and wharfage. When such modification has been made, the collection of tolls must be abolished and the toll collectors discharged. The commissioners shall construct such number of wharves as the wants of commerce shall require, and shall locate such wharves at such points and upon such lines as the board may deem most suitable for the best interests of commerce,

and shall repair and maintain all the wharves, piers, quays, landings, and thoroughfares the wants of commerce may require, and generally to erect all such improvements as may be necessary for the safe landing, loading and unloading, and protection of all classes of merchandise, and for the safety and convenience of passengers passing into and out of the city and county of San Francisco by water. And for the purpose of repairing said wharves, piers, quays, and landings, the commissioners are hereby authorized and empowered to purchase or construct pile-drivers, and the necessary machinery to be used therewith, and employ men for operating the same; nor shall any such wharf be constructed upon such place or line as will cause any slip or dock to be less than one hundred and thirty-six feet wide at the most narrow point between the wharves. The commissioners are hereby authorized and empowered to purchase or construct works for preserving piles and timber, and the necessary machinery to be used therewith, and operate said works, and for that purpose to employ men and purchase chemicals, or such other materials as may be necessary for the preserving of piles and timber. The purchase of chemicals can be made without advertising for proposals therefor. When they determine that a new wharf shall be erected, or any other necessary improvement constructed, or repairs made, or dredging machines, pile-drivers, scows, steam tugs, or any necessary machinery or material obtained, the costs of which shall exceed three thousand dollars, they shall advertise for sealed proposals for a period not less than ten days, in one or more of the daily newspapers in the city and county of San Francisco. Every proposal shall be accompanied by a certified check for an amount equal to five per cent of the amount of such proposal, such check to be made payable to the order of the secretary of said board; conditioned, if the proposal is accepted and the contract awarded, and if the bidder shall fail or neglect to execute the contract and give the bond required within six days after the award is made, in that case the said sum mentioned in said check shall be paid into the state treasury by said secretary, as liquidated damages for such failure and neglect, as a portion of the San Francisco Harbor improvement fund. Such advertisement shall contain a general description of the work to be done, the material

to be used, the place where to be used, and must refer to specifications, which must contain a full and accurate description of the work to be performed, the material to be used, and where to be used; which specifications shall be kept in the office of the secretary of the board in such manner that all persons may inspect the same during the usual business hours of all days except Sundays and holidays. On a day named in the advertisement, the commissioners shall open the bids in the presence of such bidders as are present, and award the contract to the lowest bidder, who shall furnish sufficient sureties to guarantee the performance of the work. If, in the opinion of the commissioners, the bids are too high, they may reject them, and advertise anew in like manner as before. If, in the opinion of the commissioners, the second bids are too high, they may reject them likewise, and enter into contract with responsible parties without giving further notice. Any contract entered into without giving public notice and receiving bids, must be at least ten per cent lower than the lowest rejected bid. The board may construct such harbor embankment or seawall as shall be necessary to protect the harbor of San Francisco, and dredge such number of slips and docks as the commerce of the port of San Francisco may require, to a depth that will admit of the easy and free ingress and egress of all classes of watercraft that load and discharge cargoes at the wharves, piers, quays, landings, and thoroughfares in the harbor of San Francisco; to perform which dredging the board of state harbor commissioners are hereby authorized and empowered to purchase or construct dredging machines, scows, steam tugs, and the necessary machinery, and employ men for operating the same. When any portion of the premises described in this article shall be dredged, the sand, mud, or other substance shall be deposited in a place designated by the board in not less than fifteen fathoms of water. All classes of watercraft that uses or makes fast to any wharf, pier, quay, landing, or thoroughfare, and lands upon or loads therefrom any goods, wares, or merchandise, shall be liable and must pay to the commissioners such rates of dockage as shall be fixed by authority of this article; and all such watercraft as shall discharge or receive any goods, wares, or merchandise, while moored in any slip, dock or basin within the juris-

diction of the commissioners, shall pay one half the regular rates of dockage. Any watercraft that shall leave any wharf, pier, quay, landing, thoroughfare, slip, dock, or basin, unless forced to do so by stress of weather, without first paying the dockage due from such vessel, shall be liable to pay double the regular rates. The charge for wharfage and tolls shall be a lien upon all goods, wares, and merchandise landed upon any of the wharves, piers, quays, landings or thoroughfares upon the premises described in this article; and the commissioners, their agents or lessees, may hold possession of any such goods, wares, or merchandise so landed as aforesaid, to secure the payment of such wharfage and tolls; and for the purpose of such lien are deemed to have possession of such goods, wares and merchandise so landed until such charge for wharfage and tolls are paid. The commissioners shall have power to make reasonable rules and regulations concerning the control and management of the property of the state which is intrusted to them by virtue of this article, and said commissioners are hereby authorized and required to make, without delay, and from time to time, and publish not less than thirty days in a daily newspaper of general circulation published in the city and county of San Francisco, all needful rules and regulations not inconsistent with the laws of the state or of the United States in relation to the mooring and anchoring of vessels in said harbor, providing and maintaining free, open, and unobstructed passageways for steam ferryboats and other steamers navigating the waters of the bay of San Francisco and the fresh water tributaries of said bay, so that such steamers can conveniently make their trips without impediment from vessels at anchor or other obstacles. And said commissioners may also make all needful rules and regulations governing the removal of such vessels from the wharves and other landings, and from slips and docks as are not engaged in receiving or discharging cargo, prescribing the time during which goods, wares, and merchandise landed upon any wharf, pier, quay, landing, or thoroughfare shall be permitted to remain thereon, and may divide the same into several classes, and may, by such rules and regulations, provide that in case any such goods, wares, or merchandise remain upon any wharf, pier, quay, landing, or thoroughfare beyond the term so

prescribed, the respective wharfinger may, under the order of the commissioners, remove and deposit the same in a suitable place, at the charge, risk, and expense of the owner thereof. When any goods, wares, or merchandise shall have remained upon any wharf, pier, quay, landing, or thoroughfare more than twenty-four hours, the commissioners may, in their discretion, charge such additional rates for each subsequent day as in their opinion is just and equitable. The commissioners may, in their discretion, set apart and assign, for the exclusive use of the watercraft used by the officers of the federal government, such convenient and safe landings as such officers may require, together with suitable premises near such landings as may be set apart and assigned for their use, upon which premises such officers may cause to be erected offices and storehouses to suit their convenience; and the commissioners shall charge a reasonable compensation per month for the use of such landings and office and storehouse premises; set apart and assign a suitable and proper locality for the use of the harbor police of the city and county of San Francisco, and also a suitable place for a boathouse station, for the exclusive use of the quarantine and health officers of said city and county, without compensation; set apart and assign, for the exclusive use of steam ferryboats, suitable slips, in which such structures may be erected as will secure the safe and convenient landing of passengers and safe landing and delivery of freight; set apart and assign suitable wharves, berths, or landings for the exclusive use of vessels; to construct suitable sheds, gates, and other temporary structures as may be necessary for the safe and convenient landing of passengers and safe landing and delivery of freight; and set apart and assign, for the sole and exclusive use of the fishermen of the city and county of San Francisco, such place or places as the said commissioners shall deem proper, sufficient, and adapted for the requirements and necessities of said fishermen; provided, the premises set apart by said commissioners shall be used only for the legitimate business of said fishermen, and for no other purpose; and provided, said commissioners shall not charge therefor more than the following rates: For boats over twenty-two feet and under forty feet long, one dollar per week; for boats from sixteen to twenty-two feet long,

seventy-five cents per week; and for all boats less than sixteen feet long, twenty-five cents per week. The commissioners may assign suitable places for the landing of horses, cattle, sheep, swine; and when such places have been assigned, it shall be a misdemeanor for a commander of any watercraft to land any greater number than ten at any one time from any watercraft at any other place. The commissioners may set apart, for the uses and purposes of dry docks and marine railways, such portions of the water front northwesterly of the northerly end of Kearny Street, and southerly of the easterly end of Solano Street, as the wants of commerce may require. The commissioners shall not have the right to renew any lease, or to lease any premises under their control for any purpose whatever, except as otherwise specially provided, but they may permit any property under their control to be used by any corporation, firm, association, person, or company, but in no case shall any corporation, firm, association, person, or company enjoy the use of any of the property under the commissioners' charge, except such use as shall be terminated as herein provided; and the said commissioners may condemn, purchase, and pay a reasonable compensation for such structure as may have been erected upon the said premises, which structure. in the opinion of the board and engineer may be useful for such commercial purposes as this article is intended to promote. No person or company shall land or remove any goods, wares, or merchandise or other things, upon or from any wharf, pier, quay, landing, or thoroughfare situated upon the premises described in this article; nor shall any corporation, firm, association, company, or person collect dockage, wharfage, cranage, or toll within the boundaries of the premises described in this article, without first obtaining permission to do so from said commissioners. Any use permitted of the property by the commissioners may be terminated at any time by them, on thirty days' previous notice to the party or parties so using the same. Said board may, when the wants of commerce require, lay down such number of tracks along and on any portion of said water front as may be necessary to meet such wants, and permit the use thereof to any corporation or association, or any person or persons, under such rules, regulations, and at such compensation as said board may

determine; provided, that no special privileges shall be awarded thereon to any corporation, association, person, or persons; provided, that nothing herein shall apply to or restrict the use of any premises leased for terminal facilities under or by reason of an act of the legislature entitled "An act to amend an act entitled 'An act to amend an act entitled 'An act to amend section six of an act entitled 'An act concerning the waterfront of the city and county of San Francisco,' approved March fifteenth, eighteen hundred and seventy-eight, and to confer further powers upon the board of state harbor commissioners,' approved March seventeenth, eighteen hundred and eighty,' approved March nineteenth, eighteen hundred and eighty-nine, conferring further powers upon said board," approved March twenty-sixth, eighteen hundred and ninety-five, and which has not been declared forfeited by the board of harbor commissioners; and provided further, that switches from said railroad track or tracks may, with the permission of said board, and under the limitations and conditions of this act, be constructed by corporations, or any person or persons, leading to any warehouse or place of business. Nor shall any person or company place, or cause to be placed, any obstructions in that portion of the bay of San Francisco described in this article, nor upon any wharf, pier, quay, landing, or thoroughfare, without the consent of the board. Whenever any wharf, pier, quay, landing, or thoroughfare in the harbor of San Francisco shall be incumbered, or their free use interfered with, by goods, wares, merchandise, or other substance, whether loose, or built upon, or fixed to any such wharf, pier, quay, landing, or thoroughfare it shall be the duty of the commissioners to notify, in writing (which service may be served by a wharfinger, or the secretary or assistant secretary of the board), the owner, agent, or occupant, or person placing or keeping such obstructions thereon, to remove the same within twenty-four hours after the serving of such notice; and in case of failure to comply with such notice, and remove such obstructions, the owner, agent, occupant, or person notified shall be liable to pay the commissioners the sum of twenty-five dollars for each and every day during which such obstruction shall remain upon any such wharf, pier, quay, landing, or thoroughfare; and the commissioners shall have power, in their discretion, to remove

any such incumbering substance, and store the same in any suitable, convenient, and safe place, and a sum equal to the amount of the expenses of the removal, together with all other necessary charges, shall be paid by the owner of such incumbering substance to the commissioners, and such sum and necessary charges shall be a lien on such substance until paid. The rate of dockage, wharfage, and tolls shall not exceed those established by the board of state harbor commissioners July first, eighteen hundred and seventy-four, and dockage shall not be collected on any vessel lying at anchor outside of dock, wharf, or slip. Nothing in this section shall be construed as authorizing the board of harbor commissioners to construct any railroad along and upon any open canal extending inland from said waterfront. But said harbor commissioners may, when a water-front railroad shall be constructed by them, construct the same across the outlet of such open canal. En. March 12, 1872. Am'd. 1875-6, 36; 1887, 224; 1889, 380; 1900, 9; 1901, 619.

Cal.Rep.Cit. 60, 326; 60, 350; 64, 502; 81, 30; 81, 35; 81, 36; 92, 664; 101, 15; 111, 582; 111, 583; 111, 585; 111, 587; 118, 610; 122, 353; 130, 444; 130, 445; 130, 446; 130, 448.

§ 2525. **Extension and supervision of streets along water front.** The board of state harbor commissioners are authorized to extend any of the streets lying along the water front of said city and county, to a width not exceeding one hundred and fifty feet, where they have not been already so extended. The outer half of such streets must be constructed or built and maintained in good repair by the state harbor commissioners, or parties holding under them, and may be used as a landing place or pier, on which dockage, wharfage, and tolls may be collected. And until such extensions are made, the commissioners may have and use as a landing place, with full power to collect dockage, wharfage, and tolls thereon, so much of the streets now fronting upon the water front as may be used for such purpose without obstructing the same as a thoroughfare. The inner half of such streets shall be constructed and maintained in good repair by the owners of the lots abutting thereon, and the city and county of San Francisco. The commissioners are authorized to construct, across the outer half of said streets, an extension of the sewers of the said city and county. If it be necessary to take

any land for the purpose of widening any such street, the commissioners are hereby authorized to institute and prosecute to final determination, proceedings therefor, in conformity with the provisions of part third, title seven, of the Code of Civil Procedure, and to pay such compensation as may be assessed for such land taken. When it becomes necessary for the commissioners to construct any wharves on the line of the water front, they are authorized to adopt and pay for any structures which would form part of such wharves, and which have been constructed along such line by private parties, prior to the passage of this act. En. March 12, 1872. Am'd. 1875-6, 43; 1875-6, 51.

Cal.Rep.Cit. 60, 326; 60, 350.

East Street in San Francisco made a thoroughfare: See Stats. 1878, p. 263.

§ 2526. **Limit of money to be collected.** No greater amount of money shall, in the main, ever be collected by the collection of dockage, wharfage, tolls, rents, and cranage, than shall be necessary to construct and keep in repair such number of wharves, piers, landings, and thoroughfares, construct sheds, dredge such number of slips and docks, construct a sea wall and harbor embankment, and pay incidental expenses allowed to be paid by this article. En. March 12, 1872. Am'd. 1875-6, 43.

Cal.Rep.Cit. 111, 583.

§ 2527. **Requisites of valid contract.** No contract or obligation entered into by the harbor commissioners, which creates a liability or authorizes the payment of money, shall be valid or of binding force unless signed by all three of the commissioners, and countersigned by the secretary of the board; nor shall any contract, involving the payment of money, be made by the said commissioners unless the amount then to the credit of the harbor improvement fund, together with the revenue estimated to accrue up to the time of the maturity of such contract, over and above the current expenses of the commission, be sufficient to meet the payments to become due thereon; provided, such estimate of revenue shall be limited, as to time, to fifteen (15) years. Where the work to be done is the construction of a new wharf, bulkhead, or breakwater and its appurtenances, the board may lease said wharf, bulkhead, or breakwater and its appur-

tenances for a period not to exceed fifteen years, and for an amount not to exceed the cost of constructing said work, the rents therefrom to be applied, in whole or in part, in payment for the cost of such construction, and said board may provide in the contracts for the same that the rents therefrom shall be so applied, or the work be paid for, in whole or in part, from such rents and revenues.

Sec. 2. All leases hereunder shall be made upon competitive bids after such public advertisement as the commissioners shall deem sufficient, inviting proposals or bids therefor, and shall be awarded to the person who will pay the amount required to construct such improvement, and execute and take a lease thereof for the shortest period of such time. En. March 12, 1872. Am'd. 1875-6, 44; 1877-8, 48; 1900, 19; 1903, 270.

Cal.Rep.Cit. 54, 292; 54, 298; 81, 23; 111, 583.

San Francisco Harbor improvement fund: Post, sec. 2533.

§ 2528. Disposition of moneys collected. All moneys collected shall be paid into the state treasury, and be credited to the San Francisco Harbor improvement fund, at least once in each month, except so much thereof as may be necessary to pay the salaries of officers, office rent, cost of office furniture, books, stationery, lights, fuel, expense of dredging, expense of pile driving and piles, expense of preserving piles and timber, cleaning the wharves and bulkheads, legal and other incidental expenses, and in addition six thousand dollars per month for urgent repairs, which last sum, if so much be required, may be used in repairing the wharves, piers, landings, thoroughfares, sheds, and other structures, and the streets bounding on the water front under the jurisdiction of the board without advertisement for proposals therefor. Such moneys may be remitted to the state treasurer by express. En. March 12, 1872. Am'd. 1875-6, 44; 1883, 52; 1887, 231; 1889, 388.

§ 2529. Vouchers, drafts, and warrants. The commissioners shall take vouchers for all sums of money by them expended under the authority of this article, excepting fifty dollars per month for postage stamps, express, and other incidental expenses, and safely keep the same

on file in the office of the board. For all sums of money paid by the commissioners, excepting those mentioned in section twenty-five hundred and twenty-eight, drafts shall be drawn by them on the controller of state, countersigned by the secretary of the board, and the controller of state shall draw his warrant on the state treasurer, who shall pay the same out of any money in said treasury credited to the San Francisco Harbor improvement fund. No warrant shall be drawn by the controller upon the treasurer of the state, as provided in this section, unless the order bears the signatures of all three commissioners, and of the secretary of the board. En. March 12, 1872. Am'd. 1875-6, 44.

Cal.Rep.Cit. 53, 201.

§ 2530. **Reports and receipts.** On the payment to the state treasurer of any sum of money, the secretary and state treasurer must report to the state controller the amount so paid, and the treasurer must give the secretary a receipt for the same. Such payments shall be considered as payments into the state treasury, and the treasurer shall be responsible on his official bond therefor. En. March 12, 1872. Am'd. 1875-6, 44; 1883, 52; 1887, 232.

§ 2531. **Ex-officio members of board.** The governor of the state and the mayor of the city and county of San Francisco are hereby made ex-officio additional members of the board of state harbor commissioners, for the special purposes herein mentioned, and shall take part in the action of the board as hereinafter provided. En. March 12, 1872. Am'd. 1875-6, 45.

Cal.Rep.Cit. 81, 84.

§ 2532. **New sea wall for San Francisco Harbor.** The board of state harbor commissioners are hereby authorized and empowered and directed, within six months from and after the passage of this act, to employ two consulting civil engineers, to act in concert with the engineers of the board, to make a survey, select and locate a new line for a harbor embankment or sea wall, and make a report of their doings to said commissioners, who shall, after receiving the same, appoint a time for holding, at the office of the board, a special meeting of the board to consider the question of the adoption or rejection of the

same. The board shall, at least ten days previous to said meeting, notify the governor of the state and the mayor of the city and county of San Francisco of the time, place, and object of said meeting of said board, and shall request them to be present and take part in the consideration of the question; and at said meeting or any adjourned meeting thereof, the governor and mayor shall be deemed additional members of said board, with like powers and rights as the other members thereof. If they are not present at the meeting, the board shall adjourn to a day certain, and notify them anew, as before; and if either be present at the adjourned meeting, with three commissioners, action may be had, and an affirmative vote of all four present shall determine the question; and any less vote shall be a negative vote. But the board may order new surveys and location, which may be adopted or rejected in like manner as before. If the vote is in the affirmative, the line adopted shall be thenceforth the line of the harbor embankment and sea wall of the port of San Francisco. En. March 12, 1872. Am'd. 1875-6, 45.

Engineers of the board: See ante, sec. 2522.

Line of the harbor embankment and sea wall of the port of San Francisco fixed by Stats. 1878, p. 263.

Sea wall declared a public use: Stats. 1878, p. 263.

§ 2533. San Francisco Harbor improvement fund. On and after the passage of this act, the treasurer of the state shall keep the money remitted to him by the board of state harbor commissioners, to the credit of a fund to be known as the San Francisco Harbor improvement fund; all moneys in the state treasury to the credit of the state wharf and dock fund shall be transferred by the state treasurer to the San Francisco Harbor improvement fund, and the state wharf and dock fund account shall be closed, and the state treasurer shall notify the board of such transfer, after which all drafts drawn by the board shall be paid by the treasurer out of the San Francisco Harbor improvement fund. En. March 12, 1872. Am'd. 1875-6, 45.

San Francisco Harbor improvement fund, special references to: Ante, secs. 2527, 2528, 2529; post, 2535.

Transfer of San Francisco Harbor protection fund to harbor improvement fund, directed by Stats. 1876, p. 761.

§ 2534. Limit of compensation for collecting dockage, etc. (Repealed.) En. March 12, 1872. Am'd. 1875-6, 46. Rep. 1883, 52.

§ 2535. State treasurer's receipts, disbursements, and account books. The state treasurer shall receive all moneys paid by the state harbor commissioners, and keep the same in a separate fund to be known as the San Francisco Harbor improvement fund, and pay the same out as provided for in this article, and shall keep an accurate account of all moneys received by him and paid out under the authority of this article, in books kept solely for that purpose; which said books shall be open at all times to the inspection of the governor and controller of state, and of any committee appointed by the legislature, or by either branch thereof. En. March 12, 1872. Am'd. 1875-6, 46.

§ 2536. Proposals and contracts for construction of new sea wall. When the commissioners determine to construct any part of the sea wall, they must advertise for sealed proposals for not less than thirty days, in not less than two daily papers in San Francisco. The advertisement must give a full and accurate description of the work to be done, the place where to be done, and the material to be used. On the day stated in the advertisement, the bids must be opened in the presence of such bidders as are present, and the contract awarded to the lowest bidder, who shall give a bond, with two or more responsible sureties, to be approved by the commissioners, for the due performance of the work. Their approval must be indorsed on said bond. If, in the opinion of the commissioners, the bids are too high, they shall reject them and advertise anew, in like manner as before. And if, in the opinion of the commissioners, the second bids are also too high, they shall reject them likewise, and may enter into a contract with responsible parties without giving further notice. The parties entering into a private contract with the commissioners must give a bond, with two or more responsible persons as sureties, to be approved by the commissioners, which approval shall be by writing indorsed upon said bond, conditioned for the faithful performance of the contract. But the consideration agreed to be paid in any contract entered into without giving public notice, must be five per cent lower

than the lowest responsible bid rejected. The work to be performed under any one contract shall not exceed one thousand lineal feet of harbor embankment or sea wall. But the commissioners may enter into as many contracts at the same time as they deem expedient, provided the amount in the harbor improvement fund, together with the revenue estimated to accrue pursuant to section two thousand five hundred and twenty-seven of the Political Code shall be sufficient to meet the contract price of such work, after deducting the current expenses of the commission and the amount required for the erection and repair of the wharves, dredging the docks and slips, and for incidental expenses; but in no event shall the state be liable on such contracts for any deficiency in the harbor improvement fund. Separate contracts may be entered into for the dredging of a channel for the reception of the rock required for construction of a harbor embankment; provided, that the advertising of sealed proposals, the receiving and opening of bids, and the awarding of contracts required in this section, shall be complied with in the letting of such work in separate contracts. The commissioners may, if in their opinion it will be more economical, dredge, with the dredge belonging to the state, the channel necessary for the reception of the stone used in the construction of the sea wall. No contractor who enters into a contract to construct any portion of said sea wall shall be required to commence the work in less than thirty days after the awarding of the contract. The board shall, at least ten days previous to the holding of any meeting, as provided in this section, notify the governor of the state, and mayor of the city and county of San Francisco, of the time and place and object of the meeting, and request them to be present and take part therein; and at said meeting the governor and mayor shall be deemed additional members of said board, with like powers and rights as the other members thereof; and no contract shall be entered into under the authority of this section without the consent of either the governor or mayor. Neither the commissioners nor their appointees shall be interested in any contract for the erection or repairing of any work upon the premises described in this article. Any commissioner or appointee who shall be interested

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is guilty of a felony. Every proposal shall be accompanied by a certified check for an amount equal to five per cent of the amount of such proposal, to be made payable to the order of the secretary of the board, conditioned that if the proposal is accepted and the contract awarded, and if the bidder shall fail or neglect to execute the contract and give the bond required within six days after the award is made, in that case said sum mentioned in said check shall be deemed liquidated damages for such failure and neglect, and shall be paid into the San Francisco Harbor improvement fund, and all contracts made pursuant to this title shall provide, under penalties of forfeiture of contract, at the option of the commissioners, that no Chinese or Mongolian labor shall be employed on the work. En. March 12, 1872. Am'd. 1875-6, 46; 1877-8, 48.

Action on report of survey and location of sea wall: Ante, sec. 2532.

San Francisco Harbor improvement fund: Ante, sec. 2533.

No Chinese labor to be employed on public work: Const. Cal., art. XIX, sec. 3.

East Street in San Francisco to be constructed by contract, as provided in this section: See Stats. 1878, p. 263.

§ 2537. Report of commissioners to governor. The commissioners shall, on or before the first day of November, A. D. eighteen hundred and seventy-seven, and every two years thereafter, make to the governor a full report of all moneys by them received and disbursed, stating, specifically, for what the same was received and for what purpose expended, and shall give a concise account of all improvements made, and the general condition of the property under their charge. En. March 12, 1872. Am'd. 1875-6, 47.

Report of commissioners to governor, limit of time for: Ante, sec. 332. Number to be printed: Ante, sec. 334.

§ 2538. Maps of changes in lines of water front or streets. In case the lines of the water front of the city and county of San Francisco, or the lines of any of the streets of said city and county, ending at said water line, shall be changed by authority of this article, the com-

missioners shall cause to be made two accurate maps of survey, showing such change, which maps shall be dated, certified, and signed by the engineer of the board and commissioners, and one filed in the office of the recorder of said city and county, and the other in the office of the board. After being so filed, they shall be considered and treated as official maps by all courts of record in the state. En. March 12, 1872. Am'd. 1875-6, 48.

§ 2539. **Office and duties of chief wharfinger.** The chief wharfinger shall keep an office in some convenient place upon the city front, between Market and Pacific streets, which shall be kept open every day (Sundays and holidays excepted) from seven A. M. till six P. M. The commissioners shall furnish a suitable building for an office, for the exclusive use of said chief wharfinger, and assistant chief wharfinger, with suitable office furniture. It shall be the duty of the chief wharfinger to execute and enforce the rules and regulations which may be established by said board of state harbor commissioners pursuant to the provisions of this article. And it shall be the duty of all pilots, masters of tugboats, masters, owners, and consignees of vessels, to obey all lawful orders and directions of the chief wharfinger in relation to the stationing, anchoring, and removing of vessels under and pursuant to such rules and regulations. The chief wharfinger is empowered to determine cases of collision, by consent of all parties interested, and where damages do not exceed three hundred dollars the decision is final. En. March 12, 1872. Am'd. 1875-6, 48.

Refusal to obey chief wharfinger's instructions is misdemeanor: Post, sec. 2541.

§ 2540. **Duties of chief wharfinger as to abandoned watercraft and boats adrift.** In addition to the duties required to be performed by the chief wharfinger, by any section in this article preceding this section, he shall take in charge all abandoned watercraft and all boats picked up adrift, and secure the same; after which he shall advertise, for one week, in one of the daily newspapers printed in the city and county of San Francisco, giving the full particulars pertaining to the same, and request all parties interested to appear and establish

their title or claim thereto, within twenty days from the last publication. If claimed within said period, such property shall be delivered to the owner on payment of all costs of removing, securing, and advertising the same. If not claimed within said period, or if the owner fails to pay the charges, such property shall be sold by the chief wharfinger, to the highest bidder, at public auction, and the proceeds, less the costs, shall be paid the owner, if claimed by him, or, if not claimed by the owner, shall be paid to the board of state harbor commissioners; but the owner shall be entitled to receive from said board the amount so paid, if he shall claim the same within one year from the date of said payment. For the purposes of this section, the harbor of San Francisco shall be the tide-waters of the city and county of San Francisco, and the jurisdiction of the chief wharfinger shall, when performing the duties required by this section, be coextensive with such tide-waters. En. March 12, 1872. Am'd. 1875-6, 48.

Wrecks and wrecked property: Ante, secs. 2403-2418.
Lost and unclaimed property: Post, secs. 3136-3157.

§ 2541. Failure to obey orders of chief wharfinger. If any master, agent, or owner of any watercraft shall refuse or neglect to obey the lawful orders or directions of the chief wharfinger in any manner pertaining to the regulations of said harbor, or the removal or stationing of any watercraft, such master, agent, or owner, so refusing or neglecting, is guilty of a misdemeanor, and, upon conviction thereof before any court of competent jurisdiction, shall be punished by a fine not to exceed three hundred dollars, or by imprisonment not to exceed one hundred days in the jail of the city and county of San Francisco. En. March 12, 1872. Am'd. 1875-6, 49.

§ 2542. Obstructions to navigation. All persons are forbidden to deposit, or cause to be deposited, in the waters of the harbor of San Francisco, as described in the preceding sections, any substance that will sink and form an obstruction to navigation, without first obtaining permission, in writing, of the board of state harbor commissioners, which permission shall describe, with an ordinary degree of certainty, the place where such deposit may be made, and the secretary of the board shall record

such permission. Any person violating the prohibition contained in this section is guilty of a misdemeanor, and, upon conviction thereof before a court of competent jurisdiction, shall be fined not less than one hundred or more than five hundred dollars, or imprisoned in the jail of the city and county of San Francisco not less than thirty nor more than ninety days; provided, that nothing herein shall be construed to prevent or interfere with the construction of works now in progress in connection with the Oakland harbor. En. March 12, 1872. Am'd. 1875-6, 49.

§ 2543. **Fast driving on wharves prohibited.** It shall not be lawful for any person to drive a horse or mule, or any vehicle drawn by one or more horses or mules, used in the removal of merchandise upon any wharf, pier, quay, landing, or thoroughfare, faster than a walk. Any person violating the prohibition in this section contained is guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be fined not less than twenty dollars, or imprisoned in the county jail of the city and county of San Francisco not less than ten days. En. March 12, 1872. Am'd. 1875-6, 49.

§ 2544. **Police judge's court to try misdemeanors hereunder.** The police judge's court of the city and county of San Francisco shall have jurisdiction to try all cases of misdemeanor arising under this article. En. March 12, 1872. Am'd. 1875-6, 50.

§ 2545. **Qualifications of officers.** No person shall be appointed to any office by virtue of this article, nor be employed in the service of the board, unless he be a qualified elector of the state, nor shall any person be so appointed or employed who is interested in any vessel sailing or plying in and out of or on the inland waters of the bay of San Francisco, as owner, mortgagee, or otherwise, or as a stockholder in any company owning such vessels, or who is a consignee, the general or freight agent or manager of any such vessels, or agent or other employee of the owner of any such vessels, or who is engaged in the business of marine insurance, or of procuring such insurance, or who is engaged as a stevedore, in loading and discharging such vessels. No person not a citizen of the United States shall be employed either

as a contractor or laborer on any work done under this article. And eight hours shall constitute a legal day's work, whether performed directly for the state or for the person or persons receiving a contract under this article. En. March 12, 1872. Am'd. 1875-6, 50; 1883, 52; 1887, 232.

§ 2546. Obligee on official bonds. All official bonds required to be given by authority of this article shall be to the people of the state of California. En. March 12, 1872. Am'd. 1875-6, 50.

§ 2547. Seal. The board of state harbor commissioners shall procure and adopt a seal. En. March 12, 1872. Am'd. 1875-6, 50.

§ 2548. When no tolls or wharfage to be collected. No tolls or wharfage shall be collected from travelers going on board or leaving any steamer or ferry, or upon their carriages or baggage, nor from any person or vehicle employed to transport or convey said baggage to or from any steamer or ferry; nor for empty packages returned to the wharf or any vessel; nor for domestic supplies for private individuals, intended for consumption and not for sale, weighing less than one hundred pounds. En. March 12, 1872. Am'd. 1875-6, 50; 1877-8, 50.

§ 2549. Collections and payments in gold and silver coin only. The revenue collected and disbursed by authority of this article shall be gold and silver coin of the United States. En. March 12, 1872. Am'd. 1875-6, 50.

§ 2550. Wharfingers and collectors as special policemen. It is hereby made the duty of the board of police commissioners of the city and county of San Francisco to appoint such number of wharfingers and toll collectors special policemen as such commissioners shall request, in writing, such police commissioners to appoint, and also shall furnish such special policemen the usual badge of office, which shall be paid for by the commissioners; such appointments must be renewed once in each year. The jurisdiction of such special policemen shall be coextensive with the premises described in this article, and their terms of office as such wharfingers and toll collectors. En. March 12, 1872. Am'd. 1875-6, 50.

§ 2551. Pending actions and proceedings not affected. Nothing in this article shall be taken or deemed to affect any action or suit now pending, or any right of action accrued, or any contract or obligation existing under the provisions of the statutes hereby amended; but such suits or actions may be prosecuted in the name in which they have been instituted, and such rights of action, contract, or obligation shall remain unimpaired, and may be prosecuted and enforced in all respects the same as if this amendment had not been made. En. March 12, 1872. Am'd. 1875-6, 50.

Pending actions and proceedings not affected: Compare, ante, secs. 8, 18.

§ 2552. Salaries of officers. The monthly salaries of the officers of the board shall be as follows: The president, three hundred dollars; each of the other two commissioners, two hundred and fifty dollars; the secretary, two hundred and fifty dollars; the assistant secretary, one hundred and fifty dollars; the attorney, two hundred dollars; the chief engineer, two hundred and fifty dollars; the chief wharfinger, two hundred and fifty dollars; the wharfingers, one hundred and twenty-five dollars; and the collectors, one hundred dollars. The board must fix the compensation of the other employees. No ex-officio officer, nor consulting engineer, shall receive any compensation, except traveling and other incidental expenses. En. March 12, 1872. Am'd. 1875-6, 51; 1877-8, 51; 1883, 52; 1887, 232; 1889, 388.

§ 2553. Duties of attorney-general. The attorney-general of the state must give such legal advice and render such legal services as may from time to time be required of him by the commissioners, in connection with their duties without further conpensation. En. March 12, 1872. Am'd. 1875-6, 51.

Cal.Rep.Cit. 111, 583.

§ 2554. Office rooms. (Repealed.) En. March 12, 1872. Rep. 1875-6, 51.

ARTICLE X.

HARBOR COMMISSIONERS FOR THE PORT OF EUREKA.

§ 2567. Harbor commissioners for the Port of Eureka.
§ 2568. Powers of board.
§ 2569. Obstructions and encroachments.
§ 2569½. Private wharves and bulkheads.
§ 2570. Harbormaster, duties and powers of.
§ 2571. Compensation and expenses. Secretary and engineer.
§ 2572. Fees of harbormaster.

§ 2567. Harbor commissioners for the port of Eureka. There is a board of three commissioners, known as the "Board of Harbor Commissioners of the Port of Eureka." The mayor of the city of Eureka, in the county of Humboldt, is an ex-officio member thereof, and one of said commissioners shall be appointed by the governor of this state, and shall hold his office for two years, and until his successor is appointed and qualified; and the other of said commissioners shall be appointed by the governor, and shall hold his office for the term of four years, and until his successor is appointed and qualified. And appointments to fill vacancies, which may hereafter occur in the board of harbor commissioners of the port of Eureka shall be for the term of four years, and no person shall be eligible to the office of harbor commissioner of said port of Eureka, unless he be a resident of the city of Eureka. En. March 12, 1872. Am'd. 1877-8, 51.

Cal.Rep.Cit. 121, 549.

§ 2568. Powers of board. The board of harbor commissioners of the port of Eureka are authorized and empowered to make such rules and regulations and take such action as may be necessary or proper for the protection of navigation in Humboldt Bay or in any slough or creek emptying into the same so far as the tide ebbs and flows.

The board may regulate the erection and extension of wharves and piers and prescribe the plans and dimensions thereof and regulate the tolls, wharfage or dockage to be charged thereon. They may regulate the manner of constructing booms and limit their extension into the waters of the bay.

The board may regulate the laying of submarine cables in the waters of Humboldt Bay and make regulations to prevent interference therewith or the destruction thereof. They may prescribe and regulate the manner in which

rafts, boats or vessels must lie at anchor or be moved to any wharf or pier. They may prevent and remove obstructions to the regular ebb and flow of the tides and the deposit and escape into the waters of the bay, of substances likely to injure, interfere with or impede navigation, or to create shoals or shallows in or lessen the depth of the waters thereof. They may also regulate the speed of vessels moving in the channel or stream along the water front of the city of Eureka.

Any person violating any of the rules or regulations of the board of harbor commissioners made in pursuance of the foregoing powers shall be guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be punished by a fine not exceeding five hundred dollars ($500.00), or by imprisonment not to exceed six (6) months in the county jail of the county of Humboldt. En. March 12, 1872. Am'd. 1877-8, 51; 1901, 64.

Cal.Rep.Cit. 88, 492; 121, 549; 121, 552.

§ 2569. Obstructions and encroachments. If the waters of Humboldt Bay, or any of the sloughs or creeks emptying into the same, or the branches of such creeks or sloughs, so far as the tide ebbs and flows, be encroached upon or obstructed by dikes, dams, or in any other manner that will interfere with the regular ebb and flow of the tide, or which encroachment or obstruction shall violate any of the rules or regulations of the board of harbor commissioners, the said board of harbor commissioners may order such encroachment or obstruction to be removed.

Notice must be given to the person causing or owning such encroachment or obstruction, or left at his place of residence if he be known and reside in the county, if not, it must be posted upon said encroachment or obstruction by the harbormaster. Such notice shall specify the place and extent of the encroachment or obstruction and shall require the person or persons causing the encroachment or obstruction, or owning the same, to remove the same within ten (10) days. If the encroachment or obstruction is not removed or commenced to be removed and diligently prosecuted prior to the expiration of the ten days from the service or posting of the notice, the one who caused, owns or controls the encroachment or ob-

struction forfeits ten dollars ($10.00) for each day the same remains unremoved. If the encroachment or obstruction is such as to effectually obstruct and prevent the use of said bay or slough or branches thereof, the harbormaster must forthwith, by direction of the board, remove the same. If the encroachment or obstruction is denied, and the owner, occupant, or person controlling the matter or thing charged with being an encroachment or obstruction refuses either to remove the same or permit the removal thereof, the board of harbor commissioners must commence, in the proper court, an action in their own name, to abate the same as a nuisance, and if they recover judgment, they may in addition to having the same abated, recover ten dollars ($10.00) for every day such nuisance remains after notice, and also their costs in said action. If the encroachment or obstruction is not denied, but is not removed for five (5) days after notice is complete, the harbor commissioners may require the harbormaster to remove the same at the expense of the owner, occupant, or person causing or controlling the same and may recover their costs and expenses, and also for each day the same remains after notice is complete, the sum of ten dollars ($10.00), in an action brought in the name of the board for that purpose.

All moneys recovered in the above mentioned actions shall be paid into the treasury of the county of Humboldt for the use and benefit of the said county of Humboldt. En. March 12, 1872. Am'd. 1889, 87. Rep. 1901, 66. En. Stats. 1901, 66.

Cal.Rep.Cit. 88, 492; 121, 549; 121, 553.

§ 2569½. Private wharves and bulkheads. Every person, association, or corporation desiring to construct, erect, or extend any wharf, pier, or boom in the waters of Humboldt Bay, or of any slough or creek emptying into the same, so far as the tide therein ebbs and flows, must make an application to the said board of harbor commissioners in writing signed by the applicant or applicants, and setting forth . . . "A map or plat or plan of the proposed wharf, pier, or boom, showing the location thereof and of the lands and waters bordering thereon or near the same, and the names of the owners, occupants, and claimants of such lands and waters, or of the use thereof.

Said map, plat, or plan showing also the dimensions,

form, and construction of said wharf, pier or boom, and the distance into and along said waters the same will extend, and showing also, the uses and purposes to and for which such structure is to be applied, and the convenience or necessity, public or private, of or for the same. Upon the presentation and filing of such application, the board will appoint a time for hearing the same, which shall be at least ten (10) days and not more than twenty (20) days from its presentation. Notice of the hearing shall be given by publication in at least one (1) daily newspaper, published in the county of Humboldt, three (3) times in the week of seven (7) days preceding the time appointed for hearing, and the board may at any time order other, further, or additional notice to be given.

At the time and place appointed for hearing, or at such other time and place to which said hearing may be continued or adjourned, upon proof being made that notice of the hearing had been given as hereinbefore provided, the board shall proceed to the examination of the said application of said applicant and hearing of all parties and persons that may be brought before them, touching or concerning the same, and after such hearing and due deliberation, the board will either, according to their best judgment, reject or refuse the said application, or grant the same, as asked for, or make such conditions, restrictions, limitations, alterations, or additions as the board may deem necessary and proper for the protection of navigation in Humboldt Bay, and in creeks and sloughs emptying into the same, so far as the tide ebbs and flows therein.

No person shall build or construct any bulkhead on or along the waters of Humboldt Bay without first having obtained permission to do so from the board of harbor commissioners of the port of Eureka; and whenever permission is granted to build or construct one, it shall be built or constructed out of good, merchantable spiles, or other material satisfactory to the board of harbor commissioners, and not beyond the United States bulkhead line established.

Said work shall be done under the supervision of the harbormaster. Any person or persons, association, or corporation, who shall erect or extend, or cause to be erected or extended, any wharf, pier, boom, or bulkhead

in the waters of Humboldt Bay or of any creek or slough emptying into the same, so far as the tide ebbs and flows, without having complied with the rules and regulations of the board and the provisions of this section, and obtained permission of said board of harbor commissioners as herein provided, shall be guilty of a misdemeanor, and upon conviction thereof, before any court of competent jurisdiction, shall be punished by a fine not to exceed five hundred dollars ($500.00), or by imprisonment in the county jail of the county of Humboldt, state of California. En. Stats. 1901, 67.

§ 2570. Harbormaster, duties and powers of. The harbormaster of the port of Eureka, which office is hereby created, shall be appointed by the governor of this state on or before the first day of April, eighteen hundred and ninety-nine (1899), and shall hold office for the term of four years from and after the date of his appointment, and until his successor is appointed and qualified. 1905 200

He must enforce and carry into effect such rules and regulations as the board of harbor commissioners may from time to time adopt.

It shall be the duty of the harbormaster to collect, from day to day, all data necessary to enable the secretary of the board of harbor commissioners to compile the reports mentioned in section twenty-five hundred and seventy-one (2571) of this code.

If any master, agent, or owner of any watercraft shall refuse or neglect to obey the lawful orders or directions of the harbormaster in any matter pertaining to the regulations of said harbor, such master, agent, or owner so refusing or neglecting is guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be punished by a fine not to exceed five hundred dollars ($500.00), or by imprisonment not to exceed six months in the county jail of the county of Humboldt. En. March 12, 1872. Am'd. 1899, 89; 1901, 65.

Cal.Rep.Cit. 121, 549; 121, 551.

§ 2571. Compensation and expenses. Secretary and engineer. The members of the board of harbor commissioners shall receive a salary of four hundred dollars ($400.00) per year, to be paid from the treasury of the county of Humboldt, state of California, in the same manner as other claims against said county are paid; provided, the salary 1905 201

of the harbor commissioners herein mentioned shall not affect the present members of the board of harbor commissioners.

The board, within thirty (30) days after the passage of this act, shall appoint a secretary, whose duty it shall be to keep the office of the board open every day, legal holidays excepted. He shall safely keep and be responsible for all the books, papers, and records of the board, attend all of their meetings, keep a perfect record of their proceedings, with the names of the commissioners present thereat and keep a record of all steam and sail vessels entering and arriving or clearing and departing to and from Humboldt Bay, with a complete detailed record of their cargoes, with the port to which they sail or from which they have sailed, and he shall make reports monthly thereof in tabulated form and record the same in the records of the office, and make such other reports as directed by the board.

The secretary shall perform all of the duties required of him by law or by the rules and regulations of the board of harbor commissioners. He shall hold office for four (4) years from the date of his appointment, but may be removed by the board at any time after due investigation for causes affecting his official character or competency. The order for such removal stating distinctly the causes therefor must be entered upon their minutes.

In case of a vacancy in such office, the board must fill the same by appointment for four (4) years, subject to removal as herein provided in this section.

The salary or fees of the secretary shall be fixed by the board of harbor commissioners and shall be paid from the treasury of the county of Humboldt, state of California, in the same manner as other claims against the said county are paid.

The board shall secure the services of a competent civil engineer at such times as in their opinion they deem it necessary. The fees or salary of such engineer not to exceed ten dollars ($10) per day for each day actually employed, and shall be paid from the treasury of the county of Humboldt, state of California, in the same manner as other claims against the said county are paid. Nothing herein contained shall be construed as creating the office of engineer, nor shall his employment extend beyond the particular service for which he is employed.

All expenses necessarily incurred by the board of harbor commissioners in the performance of their duties, must be paid in the same manner, out of said treasury of said county of Humboldt, state of California, as the members of the board and the secretary are herein required to be paid. En. March 12, 1872. Am'd. 1889, 88; 1899, 90; 1901, 65.

Cal.Rep.Cit. 121, 549.

§ 2572. Fees of harbormaster. The fees of the harbormaster are prescribed by the board of commissioners, and paid monthly by the board of trustees of the town of Eureka, upon the certificate of the board of commissioners, except such fees as may be provided to be otherwise paid by the board. En. March 12, 1872. 1905 202

Cal.Rep.Cit. 121, 549; 121, 551; 121, 553.

ARTICLE XI.

HARBOR COMMISSIONERS FOR THE BAY OF SAN DIEGO.

§ 2575. Constitution of board and appointment of commissioners.
§ 2576. Bonds and officers.
§ 2577. Duties of employees.
§ 2578. Prosecution of actions.
§ 2579. Control of bay. Construction of wharves. Dockage. Regulations.
§ 2580. Extending streets.
§ 2581. Right of eminent domain.
§ 2582. Limit on collections.
§ 2583. Contract, validity of.
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§ 2585. Vouchers. Warrants. Drafts.
§ 2586. Report to controller.
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§ 2588. Sea wall, surveys for.
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§ 2590. Moneys to be kept separate by state treasurer.
§ 2591. Advertising for bids.
§ 2592. Reports to governor.
§ 2593. Map showing change of survey.
§ 2594. Refusal to obey orders of wharfinger.
§ 2595. Obstructions to navigation.
§ 2596. Speed of horses and vehicles on wharves.
§ 2597. Jurisdiction of police court over misdemeanors.
§ 2598. Qualifications of officers.
§ 2599. Bonds, obligees in.
§ 2600. Seal.
§ 2601. When no tolls or wharfage to be collected.
§ 2602. Collections to be made in coin.
§ 2603. Wharfingers and collectors as special policemen.
§ 2604. Who liable for wharfage.
§ 2605. Plats. Leasing of lands.
§ 2606. Private wharves, docks, etc.
§ 2607. Salaries and compensation.
§ 2608. Attorney-general, duties of.

[Sections 2583 to 2607, relating to sailors and sailor boarding-houses, were repealed by act approved December 22, 1875. Amendments 1875-6, p. 52. In effect immediately.]

§ 2575. **Constitution of board and appointment of commissioners.** A board of state harbor commissioners for the bay of San Diego, to consist of three persons, is hereby constituted with such powers and duties as are prescribed by law. On the passage of this act the governor must nominate and by and with the consent of the senate appoint one of said commissioners to hold office for two years, and one for three years, and one for four years from the dates of their respective commissions, and until their successors are qualified. The said officers must thereafter be nominated by the governor, and by and with the consent of the senate, be appointed for four years from the dates of their respective commissions, and until their successors are qualified. All persons appointed commissioners by virtue of this act must be qualified electors of the county of San Diego. If the term of office of any commissioner expire during the recess of the senate, the governor must grant a commission to his successor, which shall be valid to all intents and purposes, subject, however, to the consent of the senate at its next regular session. If a vacancy occurs from any cause in the office of a commissioner before the expiration of his term, his successor must be appointed and hold office only for the unexpired portion of such term. In case the senate, during its session, fail to act on or refuse its consent to any nomination the governor may make of persons to constitute the board herein first provided for, or to fill a vacancy occurring thereafter by expiration of the term or otherwise, he must, after the adjournment of the senate, grant a commission for the terms herein provided for, or for the unexpired portion of such term, as the case may be, subject, however, to the consent of the senate at its next regular session. In all cases, however, where the senate fails or refuses to confirm a nomination so made by the governor, the official acts of the person so nominated, up to the time of his nonconfirmation, shall be legal and valid to all intents and purposes, and he shall be entitled to his salary up to that time for his services rendered, but no further; provided, that upon the passage of this act, the governor shall

nominate three persons to fill such offices for the first term and submit them to the senate at least one day before its final adjournment. The commissioner first appointed for four years shall be the president and executive officer of the board. It shall be his duty to preside at its meetings, to supervise the official conduct of all its officers and employees, especially in the collection, custody, and disbursement of the revenues, and to require that all the books, papers, and accounts be accurately kept, and in proper form, and all the provisions of law and the regulations of the board be enforced and observed. He may administer official oaths to the officers and employees of the board, except the other commissioners, and to all persons in relation to the business of the board. After the expiration of the first four years, the commissioners must elect their president from amongst themselves. En. Stats. 1889, 305.

Cal.Rep.Cit. 132, 219.

§ 2576. Bonds and officers. The president of the board must give an official bond in the sum of ten thousand dollars, and each of the other commissioners in the sum of ten thousand dollars, which must be approved by the governor, and state treasurer, by written indorsement thereon, and within fifteen days after the date of their respective commissions must be filed and recorded in the office of the secretary of state, together with the official oath prescribed by law. The commissioners shall not be sureties for one another, nor shall any officer of the state, nor any officer or member of the legislature be accepted as surety on said bonds. The board, on entering upon the duties of their office, may, as soon as they deem it necessary for the performance of the duties required by this act, and have funds at their disposal to pay the salaries or compensation for services rendered, appoint the following officers, viz: A secretary, an assistant secretary, an attorney, a chief engineer, a chief wharfinger, and such assistant wharfingers and collectors as they may deem necessary. Such officers shall hold for a term of four years from the date of their respective appointments, but may be removed by the board at any time when their respective services are not required, or after due investigation for causes affecting their official character or competency. The order for such removal, stating distinctly the causes therefor, must be

entered on their minutes. In case of a vacancy in such offices, which the board may deem necessary to be filled, the board must fill the same by appointment for four years, subject to removal as hereinbefore provided in this section. During the time of any vacancy in an office to be filled by appointment of the board, the members of the board appointed by the governor shall perform any and all duties of such offices necessary to be done, as far as they are able to do so, and they may employ and pay for, out of the funds at their disposal, temporary assistance in the performance of such duties. And it shall be the duty of said commissioners to cause to be made, without unnecessary delay, a full and complete map of the entire water front of the harbor of San Diego, which map, after being approved and adopted by said board, shall be the official map of said harbor, and a certified copy shall thereupon be filed in the office of the county recorder of San Diego County. En. Stats. 1889, 306.

Cal.Rep.Cit. 132, 219.

§ 2577. Duties of employees. The secretary must keep the office of the board open every day, legal holidays excepted, from nine o'clock A. M. till four o'clock P. M. He shall safely keep and be responsible for all moneys paid into the office, and for all the books and papers of the board, attend their meetings, and keep a perfect record of their proceedings, with the names of the commissioners present thereat. He must keep in proper books an account of all moneys received and paid, and on or before the tenth day of each month must send to the state controller a statement thereof, under oath, for the preceding month, showing the sources from which such moneys were received, and the purposes for which they were paid, and must also report to the controller the amount paid to the state treasurer for the month covered by such statement. He must enter daily, in proper wharf-books, the returns made by the wharfingers and collectors, and, on the last day of each month, settle the accounts of each of them, and balance the said books as soon as possible thereafter. When money is received from any source, he must retain a stub corresponding in number, date, and amount, with the receipt given therefor, and he must require the person paying it to sign such stub. He must record at length all contracts and agreements made by the

board, and also all bonds executed by officers of the board, and keep a record of all personal property purchased and its cost, and in case any be sold, the name of the purchaser, date of sale, and the price received therefor. Before entering on the duties of his office he must give an official bond in the sum of twenty thousand dollars, and take and subscribe an official oath. Said bond must be approved by the board by written indorsement thereon, and be filed with such oath in the office of the secretary of state. The assistant secretary shall attend at the office during office hours, and must perform such services as may be required of him by the secretary of the board. Before entering on the duties of his office he must give an official bond in the sum of ten thousand dollars, and take and subscribe an official oath. Said bond must be approved by the board by written indorsement thereon, and be filed with such oath in the office of the secretary of state. The attorney shall attend to the prosecution and defense of all suits, and render such legal services as may be required by him of the board. The chief engineer must prepare such plans and specifications as the board may direct, and if adopted, and the work ordered by the board to be done, must superintend its construction. He must give constant attention to the condition of the sea wall and thoroughfares, of the sheds, wharves, piers, and landings, of the streets or parts thereof under the jurisdiction of the board, and of the construction and operating of the sea-wall railroad, and when repairs are needed must forthwith report to the board, in writing, their nature and extent, and, if ordered by the board, must have the same done at once. He must keep himself informed as to the depth of the water in the various docks and slips, and report to the board from time to time what dredging is required. He must keep a register, properly indexed, showing the date, place, and character of every piece of work done and dock dredged, when begun and when finished, with proper descriptions and drawings. He must take and subscribe an official oath, and give a bond in the sum of ten thousand dollars, to be approved by the board by written indorsement thereon. Said bond and oath must be filed in the office of the board. The chief wharfinger must station, berth, and regulate the position of vessels in the docks and harbors, and cause them to remove from time to

time, and from place to place, as the general convenience, safety, and good order may require. Subject to such regulations, he must assign berths to vessels in the order of their application after entering the harbor. He must supervise the wharfingers, and report to the board all cases of failure to perform their duties, and require all shipmasters, consigners, pilots, and masters of towboats to conform to the regulations of the board. He must require the docks, slips, wharves, piers, and other premises under the jurisdiction of the board to be kept free from all obstructions, and when parties fail to obey his order to remove the same, he must forthwith report the fact to the board, and execute their order in relation thereto. And it shall be his duty to execute and enforce the rules and regulations which may be established by such board pursuant to the provisions of this article, and he is also empowered to determine cases of collision by consent of all parties interested, and where damages do not exceed three hundred dollars, the decision is final. He shall take in charge all abandoned watercraft and all boats picked up adrift, and secure the same, after which he shall advertise for one week in one of the daily newspapers printed in the city of San Diego, giving the full particulars pertaining to the same, and request all parties interested to appear and establish their title or claim thereto, within twenty days from the last publication. If claimed within said period, such property shall be delivered to the owner on payment of all costs of removing, securing, and advertising the same. If not claimed within said period, or if the owner fails to pay the charges, such property shall be sold by the chief wharfinger to the highest bidder, at public auction; less the cost shall be paid the owner, if claimed by him, or if not claimed by the owner, shall be paid to the board of state harbor commissioners; but the owner shall be entitled to receive from said board the amount so paid, if he claim the same within one year from the date of said payment. For the purposes of this section the harbor of San Diego shall be the tidewaters of the entire bay of San Diego, and the jurisdiction of the chief wharfinger shall, when performing the duties required by this section, be coextensive with such tidewaters. The chief wharfinger shall keep an office in some convenient place upon the city front, which shall be kept open every

day (Sundays and holidays excepted) from 7 A. M. till 6 P. M. The commissioners shall furnish a suitable building for an office, for the exclusive use of said chief wharfinger and assistant chief wharfinger, with suitable office furniture. And it shall be the duty of all pilots, masters of tugboats, masters, owners, and consignees of vessels, to obey all lawful orders and directions of the chief wharfinger in relation to the stationing, anchoring, and removing of vessels under and pursuant to such rules and regulations. He must take and subscribe an official oath, and give such official bond as the board may require, subject to their approval to be indorsed thereon. Said bond and oath must be filed in the office of the board. The wharfingers shall have supervision of the wharves to which they are assigned, and must require the regulations of the board and orders of the chief wharfinger to be respected and obeyed, and good order to be preserved thereon. The collectors must collect the revenues in such manner as the board may direct, and must daily account for and pay all moneys in the office. The wharfingers and collectors must take and subscribe an official oath, and give such official bond as the board may require, subject to their approval, to be indorsed thereon. Said bond and oath to be filed in their office. All the above-named officers must perform such other duties pertaining to their positions as the board may from time to time prescribe. The board may, in its discretion, employ an assistant to the chief engineer, an assistant to the chief wharfinger, a draughtsman, a superintendent of dredges, a yardmaster, and such men on the dredges, scows, tugboats, fireboats, and railroad, and in doing urgent repairs, as they deem advisable, and prescribe their bonds, duties, and compensation; such employees shall hold their positions and be removable at the pleasure of the board; but no officer or employee of the board shall be removed or otherwise prejudiced for refusing to contribute to any political fund, or to render any political service; nor shall the board, collectively or individually, use their official influence to coerce the political action of any of the officers or employees. Nor shall the state dredgers be employed to dredge slips not under the control of the state, nor private work of any character. Nor shall the commissioners, nor their appointees, be interested in any contract for the

erection or repairing of any work described in this article. Any commissioner or appointee who shall be interested is guilty of a felony. En. Stats. 1889, 307.

§ 2578. Prosecution of actions. The commissioners may institute and prosecute to final judgment actions in the name of the people of the state of California, for the possession of any portion of the premises described in this article, or for the collection of any money due or that may become due the state by authority of this article; and the commissioners may also institute and prosecute to final judgment actions for the removal of all unlawful obstructions in or upon said premises, or for the removal of all unlawful obstructions in or upon the streets through the center of which the inshore line, or line nearest the main land bounding said premises, runs. They may also remove any unlawful obstructions thereon after the owner, possessor, or occupant, of such obstruction shall have five days' notice, in writing, to remove the same, either served on such owner, possessor, or occupant, or posted upon said obstruction by the chief wharfinger, assistant wharfinger, or wharfinger. En. Stats. 1889, 310.

Cal.Rep.Cit. 132, 220.

§ 2579. Control of bay. Construction of wharves. Dockage. Regulations. The commissioners shall have possession and control of the entire bay of San Diego, together with the improvements, rights, privileges, easements, and appurtenances connected therewith, or in any wise appertaining thereto, for the purposes in this article provided. And said commissioners, in addition to a general control over said premises, shall have authority to use for loading and landing merchandise, with a right to collect dockage, wharfage, and tolls thereon, such portions of the streets of the city of San Diego, or any city or town ending or fronting upon the waters of the bay of San Diego as may be used for such purposes without obstructing the same as thoroughfares, and authority to rent an office in any portion of the city of San Diego, and purchase from time to time suitable books for the records of the secretary and accounts of the wharfingers, together with such stationery as may be required by the board, and to fix and regulate from time to time the rates of dockage, wharfage, cranage, tolls, and rents, and collect such an amount of revenue

therefrom as will enable the commissioners to perform the duties required of them by authority of this article. And the commissioners may so modify and establish such rates of dockage and wharfage, collecting, as near as possible, equal amounts from dockage and wharfage. When such modification has been made, the collection of tolls must be abolished, and the toll collectors discharged. The commissioners shall construct such number of wharves as the wants of commerce shall require, and shall locate such wharves at such points and upon such lines as the board may deem most suitable for the best interest of commerce, and shall repair and maintain all the wharves, piers, quays, landings, and thoroughfares the wants of commerce may require, and generally to erect all such improvements as may be necessary for the safe landing, loading, and unloading, and protection of all classes of merchandise, and for the safety and convenience of passengers passing into and out of the city of San Diego, or any city or town on the bay of San Diego, by water. But no wharf shall be constructed upon such place or line as will cause any slip or dock to be less than one hundred and thirty-six feet wide at the most narrow point between the wharves. When they determine that a new wharf shall be erected, or any other necessary improvement constructed, or repairs made, or dredging machines, scows, steam tugs, and any necessary machinery, the cost of which shall exceed three thousand dollars, they shall advertise for sealed proposals for a period of not less than ten days in one or more of the daily newspapers in the city of San Diego. Every proposal shall be accompanied by a certified check for an amount equal to five per cent of the amount of such proposal, such check to be made payable to the order of the secretary of said board, conditioned if the proposal is accepted and the contract awarded, and if the bidder shall fail or neglect to execute the contract and give the bond required within six days after the award is made, in that case said sum mentioned in said check shall be paid into the state treasury by said secretary as liquidated damages for such failure and neglect, as a portion of San Diego Harbor improvement fund. Such advertisement shall contain a general description of the work to be done, the materials to be used, the place where to be used, and must refer to specifications, which must

contain full and accurate description of the work to be performed, the material to be used, which specifications shall be kept in the office of the secretary of the board in such manner that all persons may inspect the same during the usual business hours of all days except Sundays and holidays. On a day named in the advertisement, the commissioners shall open the bids in the presence of such bidders as are present, and award the contract to the lowest bidder, who shall furnish sufficient sureties to guarantee the performance of the work. If, in the opinion of the commissioners, the bids are too high, they may reject them and advertise anew in like manner as before. If, in the opinion of the commissioners, the second bids are too high, they may reject them likewise and enter into contract with responsible parties without giving further notice. Any contract entered into without giving further notice and receiving bids must be at least ten per cent lower than the lowest rejected bid. The board may construct such harbor, embankment or sea wall, as shall be necessary to protect the harbor of San Diego, and dredge such number of slips and docks as the commerce of the port of San Diego may require, to a depth that will admit of the easy and free ingress and egress of all classes of watercraft that load and discharge cargoes at the wharves, piers, quays, landings, and thoroughfares in the harbor of San Diego; to perform which dredging said board of state harbor commissioners for the bay of San Diego are hereby authorized and empowered to hire, employ, purchase, or construct dredging machines, scows, steam tugs, and the necessary machinery, and employ men for operating the same. When any portion of the premises described in this article shall be dredged, the sand, mud, or other substances shall be deposited in a place designated by the board. All classes of watercraft that use or make fast to any wharf, pier, quay, landing, or thoroughfare, and land upon or load therefrom any goods, wares, or merchandise, shall be liable, and must pay to the commissioners such rates of dockage as shall be fixed by authority of this article; and all such watercraft as shall discharge or receive any goods, wares, or merchandise while moored in any slip, dock, or basin within the jurisdiction of the commissioners, shall pay one half the regular rates of dockage. Any watercraft that shall leave

any wharf, pier, quay, landing, thoroughfare, slip, dock, or basin, unless forced to do so by stress of weather, without first paying regular rates of dockage due from such vessel, shall be liable to pay a fine not to exceed five hundred dollars. The charge for wharfage and tolls shall be a lien upon all goods, wares, and merchandise landed upon any of the wharves, piers, quays, landings, or thoroughfares upon the premises described in this article; and the commissioners, their agents, or lessees may hold possession of any such goods, wares, or merchandise so landed as aforesaid, to secure the payment of such wharfage and tolls, and for the purpose of such lien are deemed to have possession of such goods, wares, and merchandise so landed, until such charges of wharfage and toll are paid. The commissioners shall have power to make reasonable rules and regulations concerning the control and management of the property of the state which is intrusted to them by virtue of this article; and said commissioners are hereby authorized and required to make, without delay and from time to time, and publish not less than thirty days in a daily newspaper of general circulation published in the city of San Diego, all needful rules and regulations, not inconsistent with the laws of the state or of the United States, in relation to the moving and anchorage of vessels in said harbor, providing and maintaining free, open, and unobstructed passageways for steam ferryboats and other steamers navigating the waters of the bay of San Diego, so that such steamers can conveniently make their trips without impediment from vessels at anchor or other obstacles. And said commissioners may also make all needful rules and regulations governing the removal of such vessels from the wharves and other landings, and from slips and docks as are not engaged in receiving or discharging cargo, prescribing the time during which goods, wares, and merchandise landed upon any wharf, pier, quay, landing, or thoroughfare shall be permitted to remain thereon, and may divide the same into several classes, and may, by such rules and regulations, provide that in case any such goods, wares, or merchandise remain upon any wharf, pier, quay, landing, or thoroughfare, beyond the time so prescribed, the respective wharfinger may, under the order of the commissioners, remove and deposit the same in a suitable

place, at the charge, risk, and expense of the owner thereof. When any goods, wares, or merchandise shall have remained upon any wharf, pier, quay, landing, or thoroughfare more than twenty-four hours, the commissioners may, in their discretion, charge such additional rates for each subsequent day as in their opinion is just and equitable. The commissioners may, in their discretion, set apart and assign for the exclusive use of the watercraft used by the officers of the federal government, such convenient and safe landings as such officers may require, together with suitable premises near such buildings as may be set apart and assigned for their use, upon which premises such officers may cause to be erected offices and storehouses to suit their convenience, and the commissioners shall charge a reasonable compensation per month for the use of such landings, and office and storehouse premises, set apart and assign a suitable and proper locality for the use of the harbor police of the city of San Diego, and also a suitable place for a boathouse station for the exclusive use of the quarantine and health officers of said city, without compensation; set apart and assign for the exclusive use of steam ferryboats suitable slips, in which such structures may be erected as will secure the safe and convenient landing of passengers, and safe landing and delivery of freight; set apart and assign suitable wharves, berths, or landings, for the exclusive use of vessels; to construct suitable sheds, gates, and other temporary structures as may be necessary for the safe and convenient landing of passengers, and safe landing and delivery of freight; and set apart and assign for the sole and exclusive use of the fishermen of the city of San Diego, such place or places as the said commissioners shall deem proper and sufficient, and for no other purpose. The commissioners may assign suitable places for the landing of horses, cattle, sheep, and swine, and when such places have been assigned, it shall be a misdemeanor for a commander of any watercraft to land any greater number than ten at any one time from any watercraft at any other place. The commissioners may set apart for the uses and purposes of drydocks and marine railways such portions of the water front as the wants of commerce may require, and lease the same for a period not to exceed ten years. When the commissioners lease

premises for marine railways and drydock purposes, as provided in this section, they shall advertise for sealed proposals, for a period of not less than ten nor more than twenty days, in one of the daily newspapers of the largest circulation, printed in the city of San Diego, which advertisement shall contain a description of the premises to be leased. On the day named in the advertisement, the commissioners shall open the bids in the presence of such of the bidders as are present, and award the premises to the highest responsible bidder that shall furnish sufficient sureties to guarantee the payment of the rent, and may negotiate for, and accept, and cancel, any lease of any portion of the premises described in this article, and pay a reasonable compensation for any structures upon any such leased premises as in the opinion of the board and engineer may be useful for such commercial purposes as this article is intended to promote. No person or company shall, without the consent of the board of state harbor commissioners, land or remove any goods, wares or merchandise, or other thing, upon or from any wharf, pier, quay, landing, or thoroughfare situate upon the premises described in this article, unless authorized to do so by virtue of valid lease; nor shall any person collect dockage, wharfage, cranage, rent, or toll, within the boundaries of the premises described in this article, except by virtue of valid leases, without first obtaining permission to do so from said commissioners; nor shall any person or company place or cause to be placed any obstructions in the bay of San Diego, nor upon any wharf, pier, quay, landing, or thoroughfare, without the consent of the board. Whenever any wharf, pier, quay, landing, or thoroughfare in the harbor of San Diego shall be incumbered or their free use interfered with by goods, wares, merchandise, or other substance, whether loose or built upon or fixed to any such wharf, pier, quay, landing, or thoroughfare, it shall be the duty of the commissioners to notify in writing (which notice may be served by a wharfinger, or by the secretary or assistant secretary of the board), the owner, agent, occupant, or person placing or keeping such obstructions thereon, to remove the same within twenty-four hours after the serving of such notice; and in case of failure to comply with such notice, and remove such obstructions, the owner, agent, occupant, or person

so notified shall be liable to pay the commissioners the sum of twenty-five dollars for each and every day during which said obstructions shall remain upon any such wharf, pier, quay, landing, or thoroughfare; and the commissioners shall have power, in their discretion, to remove any such incumbering substance, and store the same in any suitable, convenient and safe place, and a sum equal to the amount of the expenses of the removal, together with all other necessary charges, shall be paid by the owner of such incumbering substance to the commissioners, and such sum and necessary charges shall be a lien on such substance until paid. The commissioners are authorized to assign berths or slips for the exclusive use of sea-going steamers, ferryboats, and steamboats navigating the waters of the bay of San Diego and its tributaries, and to construct suitable offices, sheds, and inclosures for the accommodation of their business, and may charge for such exclusive use a reasonable sum, irrespective of their tonnage or the number of days such berth is occupied. For the purpose of enforcing the charge for wharfage or toll on goods, wares, and merchandise, landed on any wharf, pier, or thoroughfare, or remaining thereon longer than the time prescribed by the harbor regulations, the said commissioners are authorized to take possession of such goods, wares, and merchandise; and if such charge be not paid within two days thereafter, may remove and store the same at the charge, risk, and expense of the owner or consignee thereof; or may sell the same by public auction, with or without notice, at their discretion; and for the purpose of keeping the wharves, piers, and thoroughfares free of obstructions, the said commissioners shall cause a written notice to be served on the owner, agent, consignee, or person in possession of any such obstructing material or structure; or may post a notice thereon, at their discretion, requiring its removal within twenty-four hours thereafter; and on failure to comply therewith, the commissioners may remove, store, or sell the same by public auction, at their discretion. From the proceeds of any such sale they shall retain all the wharfage and tolls due, with ten per cent thereon; and, in case of obstructions, twenty-five dollars for each and every day during which the wharf, pier, or thoroughfare has been obstructed, and also all the expenses attending such

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sale, and the surplus, if any, shall be paid to the proper party. Such sale shall be made subject to immediate removal. En. Stats. 1889, 310.

Cal.Rep.Cit. 132, 220.

§ 2580. Extending streets. The board of state harbor commissioners for the bay of San Diego are authorized to extend any of the streets lying along the water front of said city and county, to a width not exceeding one hundred and fifty feet, where they have not been already so extended. The outer half of such streets must be constructed or built and maintained in good repair by the state harbor commissioners, or parties holding under them, and may be used as a landing-place or pier, on which dockage, wharfage, and tolls may be collected; and until such extensions are made the commissioners may have and use as a landing-place, with full power to collect dockage, wharfage, and tolls thereon, so much of the streets now fronting upon the water front as may be used for such purpose without obstructing the same as a thoroughfare. The inner half of such streets shall be constructed and maintained in good repair by the owners of the lots abutting thereon. The commissioners are authorized to construct across the outer half of said streets an extension of the sewers of the said city, if it be necessary to take any land for the purpose of widening any such street. When it becomes necessary for the commissioners to construct any wharves on the line of the water front, they are authorized to adopt and pay for any structures which would form part of such wharves, and which have been constructed along such line by private parties prior to the passage of this act. En. Stats. 1889, 315.

§ 2581. Right of eminent domain. The embankments, sea walls, thoroughfares, streets, wharves, and other public places provided for in this act are hereby declared a public use, in the laying out and construction of which the right of eminent domain may be exercised by the harbor commissioners in the name of the people of the state for the estates and rights, and in the manner provided in part three, title eight, of the Code of Civil Procedure. The said commissioners are authorized to pay out of the harbor improvement fund any compensation and damages assessed in such proceedings. En. Stats. 1889, 315.

§ 2582. Limit on collections. No greater amount of money shall in the main ever be collected by the collection of dockage, wharfage, tolls, rents, and cranage than shall be necessary to construct and keep in repair such number of wharves, piers, landings, and thoroughfares, construct sheds, dredge such number of slips and docks, constructing a sea wall and harbor embankment, construct and operate a railway on the sea wall, and pay incidental expenses allowed to be paid by this article. En. Stats. 1889, 315.

§ 2583. Contract, validity of. No contract or obligation entered into by the harbor commissioners, which creates a liability or authorizes the payment of money, shall be valid or of binding force unless signed by all three of the commissioners, and countersigned by the secretary of the board; nor shall any contract involving the payment of money be made by the said commissioners, unless the amount then to the credit of the harbor improvement fund, together with the revenue estimated to accrue up to the time of the maturity of such contract, over and above the current expenses of the commission, be sufficient to meet the payments to become due thereon; provided, such estimate of revenue shall be limited as to time to one year, and as to amount to the amount of revenue of the preceding year. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 316.

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§ 2584. Moneys, disposition of. All moneys collected shall be paid into the state treasury, and be credited to the San Diego Harbor improvement fund, at least once in each month, except office rent, cost of office furniture, books, stationery, lights, fuel, expense of dredging, expense of pile driving and piles, cleaning the wharves and bulkheads, legal and other incidental expenses, and in addition one thousand dollars per month for urgent repairs; which last sum, if so much be required, may be used in repairing the wharves, piers, landings, thoroughfares, sheds, and other structures, and the streets bounding on the waterfront under the jurisdiction of the board, without advertising for proposals therefor. Such moneys may be remitted to the state treasury by express. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 316.

§ 2585. Vouchers. Warrants. Drafts. The commissioners shall take vouchers for all sums of money by them expended under the authority of this article, excepting fifty dollars per month for postage stamps, express, and other incidental expenses, and safely keep the same on file in the office of the board. For all sums of money paid by the commissioners, excepting those mentioned in section two thousand five hundred and eighty-three, drafts shall be drawn by them on the controller of state, countersigned by the secretary of the board, and the controller of state shall draw his warrant on the state treasurer, who shall pay the same out of any money in said treasury credited to the San Diego Harbor improvement fund. No warrant shall be drawn by the controller upon the treasurer of the state, as provided in this section, unless the order bears the signatures of all three commissioners, and of the secretary of the board. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 316.

§ 2586. Report to controller. On the payment to the state treasurer of any sum of money, the secretary and state treasurer must report to the state controller the amount so paid, and the treasurer must give the board a receipt for the same. Such payments shall be considered as payments into the state treasury, and the treasurer shall be responsible on his official bond therefor. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 316.

§ 2587. Ex-officio members of board. The governor of the state, and the mayor of the city of San Diego, and the mayor of National City, are hereby made ex-officio additional members of the board of state harbor commissioners, for the special purposes herein mentioned, and shall take part in the action of the board as hereinafter provided. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 317.

§ 2588. Sea wall, surveys for. The board of state harbor commissioners are hereby authorized, and empowered, and directed, within one year from and after the passage of this act, to employ two consulting civil engineers, to act in concert with the engineers of the board, to make a survey, select and locate a line for a harbor embankment or sea wall, and make a report of their doings to said commissioners, who shall, after receiving the same, ap-

point a time for holding, at the office of the board, a special meeting of the board, to consider the question of adoption or rejection of the same. The board shall, at least ten days previous to said meeting, notify the governor of the state, and the mayor of the city of San Diego, and the mayor of National City of the time, place, and object of said meeting of said board, and shall request them to be present and take part in the consideration of the question; and at said meeting or any adjourned meeting thereof, the governor and said mayors shall be deemed additional members of said board, with like powers and rights as the other members thereof. If they are not present at the meeting, the board shall adjourn to a day certain, and notify them anew as before; and if either be present at the adjourned meeting, with three commissioners, action may be had, and an affirmative vote of all four present shall determine the question; any less vote shall be a negative vote. But the board may order new surveys and locations, which may be adopted or rejected, in like manner as before. If the vote is in the affirmative, the line adopted shall be thenceforth the line of the harbor embankment and sea wall of the harbor of San Diego. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 317.

§ 2589. **Harbor improvement fund.** On and after the passage of this act, the treasurer of the state shall keep the money remitted to him by the board of state harbor commissioners for San Diego to the credit of a fund to be known as the San Diego Harbor improvement fund, after which all drafts drawn by this board shall be paid by the treasurer out of the San Diego Harbor improvement fund. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 317.

§ 2590. **Moneys to be kept separate by state treasurer.** The state treasurer shall receive all moneys paid by the state harbor commissioners for San Diego, and keep the same in a separate fund, to be known as the San Diego Harbor improvement fund, and pay out the same as provided for in this article, and shall keep an accurate account of all moneys received by him and paid out under the authority of this article, in books kept solely for that purpose, which said books shall be open at all times to the inspection of the governor and controller of state, and of

any committee appointed by the legislature, or by either branch thereof. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 317.

§ 2591. **Advertising for bids.** When the commissioners determine to construct any part of the sea wall, they must advertise for sealed proposals for not less than thirty days, in not less than two daily papers in San Diego. The advertisement must give a full and accurate description of the work to be done, the place where to be done, and the material to be used. On the day dated in the advertisement the bids must be opened in the presence of such bidders as are present, and the contract awarded to the lowest bidder, who shall give a bond with two or more responsible sureties, to be approved by the commissioners, for the due performance of the work. Their approval must be indorsed on said bond. If, in the opinion of the commissioners, the bids are too high, they shall reject them and advertise anew in like manner as before. And if, in the opinion of the commissioners, the second bids are also too high, they shall reject them likewise, and may enter into a contract with responsible parties without giving further notice. The parties entering into a private contract with the commissioners must give a bond, with two or more responsible persons as sureties, to be approved by the commissioners, which approval shall be by writing indorsed upon said bond, conditioned for the faithful performance of the contract. But the consideration agreed to be paid in any contract entered into without giving public notice must be five per cent lower than the lowest responsible bid rejected. The work to be performed under any one contract shall not exceed one thousand lineal feet of harbor embankment or sea wall. But the commissioners may enter into as many contracts at the same time as they deem expedient; provided, the amount in the harbor improvement fund, together with the revenue estimated to accrue pursuant to section (2582) twenty-five hundred and eighty-two of the Political Code shall be sufficient to meet the contract price of such work, after deducting the current expenses of the commission and the amount required for the erection and repair of the wharves, dredging the docks and slips and incidental expenses; but in no event shall the state be liable on such contracts for any deficiency in the harbor

improvement fund. Separate contracts may be entered into for the dredging of a channel for the reception of the rock required for the construction of a harbor embankment; provided, that the advertising of sealed proposals, the receiving and opening of bids, and the awarding of contracts required in this section, shall be complied with in the letting of such work in separate contracts. The commissioners may, if in their opinion it will be more economical, dredge with the dredger belonging to the state the channel necessary for the reception of the stone used in the construction of the sea wall. No contractor who enters into a contract to construct any portion of said sea wall shall be required to commence the work in less than thirty days after the awarding of the contract. The board shall, at least ten days previous to the holding of any meeting as provided in this section, notify the governor of this state and the mayors of San Diego City and National City of the time and place and object of the meeting, and request them to be present and take part therein; and at said meeting the governor and the mayors of the city of San Diego and of National City shall be deemed additional members of said board, with like powers and rights as other members thereof; and no contract shall be entered into under the authority of this section without the consent of either the governor or mayor of San Diego City, or the mayor of National City. Every proposal shall be accompanied by a certified check for an amount equal to five per cent of the amount of such proposals, to be made payable to the order of the secretary of the board, conditioned that if the proposals are accepted and the contract awarded, and if the bidder shall fail or neglect to execute the contract and give the bond required within six days after the award is made, in that case said sum mentioned in said check shall be deemed liquidated damages for such failure and neglect, and shall be paid into the San Diego Harbor improvement fund, and all contracts made pursuant to this title shall provide, under penalties of forfeiture of contract, at the option of the commissioners, that no Chinese or Mongolian labor shall be employed on the work. The right to construct, maintain, and operate railways on said bulkheads, embankment, or sea wall, shall vest absolutely in said board of harbor commissioners, to be operated by them with their

own engines, and at such charges as they may see fit to make, but they shall give all railroads terminating at the bay of San Diego equal facilities for bringing ship and car together; and as long as they have no engines of their own, they may hire such engines, or temporarily allow railroad or other companies to move their cars with other suitable engines. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 318.

§ 2592. Reports to governor. The commissioners shall, on or before the first day of October, A. D. eighteen hundred and ninety, and every two years thereafter, make to the governor a full report of all moneys by them received and disbursed, stating specifically for what the same was received and for what purposes expended, and shall give a concise account of all improvements made, and the general condition of the property under their charge. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 319.

§ 2593. Map showing change of survey. In case the lines of the water front of the city of San Diego or of any city or town on the bay of San Diego, or the lines of any of the streets of any city or town ending at said waterline, shall be changed by authority of this article, the commissioners shall cause to be made two accurate maps of survey showing such change, which maps shall be dated, certified, and signed by the engineer of the board and commissioners, and one filed in the office of the recorder of said county, and the other in the office of the board. After being so filed, they shall be considered and treated as official maps by all the courts of record in the state. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 319.

§ 2594. Refusal to obey orders of wharfinger. If any master, agent, or owner of any watercraft shall refuse or neglect to obey the lawful orders or directions of the chief wharfinger in any matter pertaining to the regulations of said harbor, or the removal, or stationing of any watercraft, such master, agent, or owner so refusing or neglecting is guilty of a misdemeanor, and upon conviction thereof, before any court of competent jurisdiction, shall be punished by a fine not to exceed three hundred dollars, or by imprisonment not to exceed one hundred days in the jail of the city of San Diego. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 319.

§ 2595. Obstructions to navigation. All persons are forbidden to deposit or cause to be deposited in the waters of the harbor of San Diego, as described in the preceding sections, any substance that will sink and form an obstruction to navigation, without first obtaining permission in writing of the board of state harbor commissioners, which permission shall describe, with an ordinary degree of certainty, the place where such deposit may be made, and the secretary of the board shall record such permission. Any person violating the prohibition contained in this section is guilty of a misdemeanor, and upon conviction thereof, before a court of competent jurisdiction, shall be fined not less than one hundred or more than five hundred dollars, or imprisoned in the jail of the city of San Diego not less than thirty nor more than ninety days. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 320.

§ 2596. Speed of horses and vehicles on wharves. It shall not be lawful for any person to drive a horse, or mule, or any vehicle drawn by one or more horses or mules, used in the removal of merchandise, upon any wharf, pier, quay, landing, or thoroughfare, faster than a walk. Any person violating the prohibition in this section contained is guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction, shall be fined not less than twenty dollars, or imprisoned in the jail of the city of San Diego not less than ten days. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 320.

§ 2597. Jurisdiction of police court over misdemeanors. The police court of the city of San Diego shall have jurisdiction to try all cases of misdemeanor arising under this article. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 320.

§ 2598. Qualifications of officers. No person shall be appointed to any office by virtue of this article, nor be employed in the service of the board, unless he be a qualified elector of the state; nor shall any person be so appointed or employed who is interested in any vessel sailing or plying in and out of, or on the inland waters of the bay of San Diego, as owner, mortgagee, or otherwise, or as a stockholder in any company owning such vessels, or who is the consignee, the general or freight agent, or manager

of any such vessels, or agent or other employee of the owner of any such vessels, or who is engaged in the business of marine insurance, or of procuring such insurance, or who is engaged as a stevedore in loading and discharging such vessels. No person not a citizen of the United States shall be employed either as contractor or laborer on any work done under this article. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 320.

§ 2599. Bonds, obligees in. All official bonds required to be given, by authority of this article, shall be to the people of the state of California. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 320.

§ 2600. Seal. The board of state harbor commissioners for the bay of San Diego shall procure and adopt a seal. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 320.

§ 2601. When no tolls or wharfage to be collected. No tolls or wharfage shall be collected from travelers going on board or leaving any steamer or ferry, or upon their carriages or baggage, nor from any person or vehicle employed to transport or convey said baggage to or from any steamer or ferry, nor for empty packages returned to the wharf or any vessel; nor for domestic supplies for private individuals, intended for consumption and not for sale, weighing less than one hundred pounds. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 320.

§ 2602. Collections to be made in coin. The revenue collected and disbursed by authority of this article shall be gold and silver coin of the United States. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 321.

§ 2603. Wharfingers and collectors as special policemen. It is hereby made the duty of the board of police commissioners of the city of San Diego to appoint such number of wharfingers and toll collectors, special policemen, as such commissioners shall request in writing, such police commissioners to appoint, and also shall furnish such special policemen the usual badge of office, which shall be paid for by the commissioners; such appointments must be renewed once in each year. The jurisdiction of such special policemen shall be coextensive with the premises described in this article, and their term of office as such

wharfingers and toll collectors. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 321.

§ 2604. **Who liable for wharfage.** Wharfage or merchandise must be paid by and collected directly from the master, owner, or consignee of vessel, and the owner, agent, or manager of railroad cars using or passing over the wharves or other landing-places, and the board must, as soon as practicable, adopt proper regulations for putting such mode of collection into effect; and thereafter no tolls must be collected by the load or vehicle, or merchandise passing on or off the wharves or other landing places; provided, the wharfage or merchandise to and from ferryboats, other than those transporting railroad cars, may be collected in such mode as the board may direct. The master, owner, or consignee of every vessel, and the owner, agent, or manager of every railroad car using or passing over any wharf or landing-place, must deliver to the wharfinger, or other officer of the board, on its arrival, and before commencing to discharge, after receiving its cargo or load, and before its departure, a full and correct statement of the quantity of merchandise intended to be discharged from, or which has been received by, such vessel or car, and must pay to said wharfinger, or other officer of the board, the amount of wharfage due on such merchandise. In case any person shall neglect or refuse to deliver such statement, or shall willfully make a false statement, he shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding one hundred days, or by both such fine and imprisonment. In case no such statement be delivered, or payment of the wharfage be not so made, the vessel or car may be removed by the wharfinger from the wharf, or other landing-place, at the expense of the master, owner, or consignee of such vessel, or owner or agent or manager of such car, and may be excluded from all the wharves or other landing-places until such statement is delivered, or payment is made. In case the master, owner, or consignee of any vessel, or the owner, agent, or manager of any railroad car using or passing over any wharf or other landing-place, shall discharge or allow to be discharged from such vessel or car any part of its cargo or load before the amount of wharfage due thereon has been fully paid, or shall re-

ceive or allow to be received on such vessel or car any part of its cargo or load before the deposit or guaranty hereinafter provided is made or given, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not exceeding five hundred dollars, or imprisonment not exceeding one hundred days, or by both such fine and imprisonment. The several wharfingers are authorized and empowered to make arrests without warrants in all cases of misdemeanor herein stated, and are hereby made peace officers for that purpose; and the police judge's court of the city of San Diego shall have jurisdiction of such cases. The moneys received on account of fines must be paid to the board of harbor commissioners; provided, that any person so arrested, may, at the discretion of the board, be discharged at any time before trial on his delivery of the statement and making payment of the wharfage as required herein, together with all costs of such arrest and prosecution. The board may by written permits, release parties from the obligation to deliver the statement or pay the wharfage at the times herein stated; provided, that before any part of the cargo or load of such vessel or car is discharged or received, a deposit be made with the said board sufficient to pay the wharfage on the merchandise intended to be discharged, or received, or a proper and sufficient guaranty or obligation in writing be given to them that the said statement will be delivered, and payment of the wharfage be made before such vessel or car shall depart from its wharf or other landing-place, or at such other time as stated in such guaranty or obligagation. Such guaranty shall be deemed an original obligation on the part of the guarantor, and no other consideration therefor need exist or be expressed than the acceptance of said permit. Nothing in this section shall be deemed to divert the lien on merchandise for its wharfage, as provided in section two thousand five hundred and twenty-four of the Political Code. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 321.

§ 2605. **Plats. Leasing of lands.** Whenever the board of state harbor commissioners for San Diego shall have located a line for a harbor embankment, or sea wall for any part of the harbor, as provided in section two thousand five hundred and eighty-nine, they shall make a plan and plat of all the lands of the state included between the said

embankment and shore line of the bay, and file a copy of the same with the recorder of the county of San Diego. The commissioners shall have the right to lease said lands under such established rules and regulations as they may adopt and publish. But no lease shall be made or be valid for a term of more than ten years, nor shall any leases be made or be valid except made to the highest bidder, at public auction, after notice has been given in the official newspaper of the city, daily, for at least thirty days prior to said auction. And all leases shall provide for the payment of monthly rentals; and that the lessee or his assigns shall not use said lands in any manner to decrease the amount of the tidal waters of the bay; and shall also provide for the forfeiture of said leases upon non-fulfillment of any of the covenants in said leases. No portion of said lands shall be leased in one lease in quantity to exceed one acre, nor shall the leases of more than three acres in quantity of said lands be sold at any one public auction. All funds derived from said leases shall be reported to and paid out from the state treasury, as provided in section two thousand five hundred and eighty-four. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 322.

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§ 2606. Private wharves, docks, etc. Every person, association or corporation desiring to construct, erect, extend or maintain, or to continue the maintenance of any wharf, pier, marine ways, drydock or shipyard in the waters of San Diego Bay, or to procure the extension of his or its rights to maintain any wharf, pier, marine ways, drydock or shipyard therein, must make an application to the said commissioners, in writing, signed by the applicant or applicants, and setting forth a map, plat or plan of said wharf, pier, marine ways, drydock or shipyard, showing the location thereof, and of the lands and waters bordering thereon or near the same, and the names of the owners, occupants, or claimants of such lands and waters, or of the use thereof. Said map, plat, or plan shall also show the dimensions, form and construction of said wharf, pier, marine ways, drydock or shipyard, and the distance into and along said waters the same shall extend, and also show the uses and purposes to and for which said structure is to be applied and the convenience and necessity, public or private, of, or for the same. Upon the presentation and filing of such application the commissioners must appoint

a time and place for hearing the same, which shall be at least ten days and not more than twenty days from its presentation. Notice of the hearing shall be given by the said commissioners, by publication in at least two daily newspapers published in the county of San Diego, three times in the week of seven days, preceding the time appointed for the hearing. At the time and place appointed for such hearing, or such other time and place to which said hearing may be continued or adjourned, upon proof being made that notice of the hearing has been given as herein provided, the commissioners shall proceed to the examination of said application and the hearing of all parties and persons who may be brought before them touching or concerning the same, and after such hearing, and due deliberation, they may reject or refuse the said application, or grant the same as asked for, or make such conditions, restrictions, limitations, alterations or additions as they may deem necessary or proper. Such permission shall not be granted for a greater period than twenty-five (25) years. No person shall build, construct or maintain any wharf or pier or marine ways, drydock or shipyard, on or along the waters of said bay without first having obtained permission to do so from said commissioners, and whenever permission is granted to build, construct or maintain one, it shall be built, constructed or maintained out of material satisfactory to the said commissioners and not beyond the United States bulkhead line; provided, no franchise granted within or bordering upon the corporate limits of any city shall be valid until the same shall be ratified and confirmed by an ordinance of such city. Said commissioners shall have authority to fix a maximum toll to be charged for the use of any wharf, pier, marine ways, drydock or shipyard whether the same has already been constructed or shall hereafter be constructed, and to make all needful rules and regulations concerning the use of the same; provided further, that if at any time the said commissioners shall desire to terminate any franchise and to purchase any wharf, pier, marine ways, drydock or shipyard, and the purchase price thereof cannot be agreed upon, then the owner of said franchise shall select two disinterested persons, and the said commissioners two disinterested persons, who shall ascertain and fix the value thereof, and if three of said four persons

cannot agree, then they shall appoint a fifth competent disinterested person, and any three of said five persons may fix the value thereof, and upon the payment or tender thereof by the commissioners, they shall be entitled to the possession thereof and the title thereto shall vest in the state of California, and all franchises to build, construct or maintain any wharf, pier, marine ways, drydock or shipyard, shall contain this provision therein; provided, that in fixing such value the franchise or privilege shall not be considered as of any value; provided further, that said commissioners shall fix the time when work shall be commenced upon any new structure and the time in which the same shall be completed, and if said structure shall not be completed within such time, or such additional time as the said commissioners shall give, then such right and franchise shall lapse and become void; provided further, that all franchises shall contain a provision to the effect that nothing therein contained shall be construed as permitting the erection or maintenance of any wharf, pier, marine ways, drydock or shipyard, in such manner or in such place as to prevent or interfere with the erection and maintenance of a sea wall in accordance with the plans heretofore adopted by said commissioners. The said commissioners are hereby authorized to grant to any person or railroad corporation authority to construct and maintain along and over the water front of the bay of San Diego, a railroad for a period not exceeding fifty (50) years, upon such terms and conditions as said commissioners may provide; provided, that where such railroad is within the limits of any city, such grant shall be approved, ratified and confirmed by an ordinance of such city. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 323. Am'd. 1903, 56.

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§ 2607. Salaries and compensation. The monthly salaries of the officers shall be as follows: Each of the three commissioners, twenty-five dollars; the secretary, who shall be elected by the commissioners from their own number, one hundred dollars, in addition to his salary as commissioner. The salaries and compensation of all other officers and employees, when appointed, shall be fixed by a majority of the board of harbor commissioners, and all salaries shall be paid monthly on warrants drawn on the San Diego Harbor improvement fund, and shall be signed by the president and secretary of the board; provided, that

in no event shall the state be liable for the salaries of the members of said board of commissioners, or of the secretary thereof, or for the salary or compensation of any officer or employee elected or appointed by said board, or upon any contract made or entered into by said board. And it is hereby expressly provided that said board of commissioners shall not create any liability or indebtedness against the state in any manner or form whatsoever, and any liability or indebtedness so created, or attempted to be created, shall be absolutely null and void. En. March 12, 1872. Rep. 1875-6, 52. En. Stats. 1889, 323. Am'd. 1891, 69.

§ 2608. Attorney-general, duties of. The attorney-general of the state must give such legal advice and render such legal services as may, from time to time, be required of him by the commissioners, in connection with their duties, without further compensation. En. Stats. 1889, 323.

Cal.Rep.Cit. 182, 219.

CHAPTER II.

HIGHWAYS.

Reconstructed by act approved February 28, 1883, in accordance with article IV, section 25, subdivision 7, of the constitution: See note following sec. 2744.

Article I. Enumeration of Highways, §§ 2618-2623.
II. Rules and Restrictions Respecting the use of Highways, §§ 2631-2633.
III. Powers and Duties of Highway Officers, §§ 2641-2647.
IV. Highway Taxes, §§ 2651-2655.
V. Performance of Highway Labor and Commutation, § 2671.
VI. Laying Out, Altering, and Discontinuing Roads, §§ 2681-2696.
VII. Erection and Maintenance of Bridges, §§ 2711-2716.
VIII. Obstructions and Injuries to Highways, §§ 2731-2744.
IX. Permanent Road Divisions, §§ 2745-2772.

ARTICLE I.

ENUMERATION OF HIGHWAYS.

§ 2618. What are highways.
§ 2619. Expiration of highways.
§ 2620. Width of highways.
§ 2621. Vacation of highways.
§ 2622. Record of proceedings relating to roads and highways.
§ 2623. Title to roads.

§ 2618. What are highways. In all counties of this state public highways are roads, streets, alleys, lanes, courts,

places, trails, and bridges, laid out or erected as such by the public, or if laid out or erected by others, dedicated or abandoned to the public, or made such in actions for the partition of real property. En. March 12, 1872. Rep. 1883, 5. En. Stats. 1883, 6.

Cal.Rep.Cit. 70, 455; 71, 402; 84, 5; 91, 435; 93, 131; 95, 469; 102, 29; 103, 230; 125, 576; 132, 169; 137, 518.

Abandonment of toll road: Post, sec. 2799.

Various acts relating to highways: See General Laws, title Highways.

§ 2619. Expiration of highways. Whenever the franchise for any toll bridge, trail, turnpike, plank or common wagon road has expired by limitation or non-user, such bridge, trail, turnpike, plank or common wagon road becomes a free public highway; and no claim shall be valid against the public for right of way, or for the land or material comprising such bridge, trail, turnpike, plank or common wagon road. All public highways, once established, shall continue to be public highways until abandoned by order of the board of supervisors of the county in which they are situated, or by operation of law, or judgment of a court of competent jurisdiction. En. March 12, 1872. Am'd. 1873-4, 116. Rep. 1883, 5. En. Stats. 1883, 6.

Cal.Rep.Cit. 65, 251; 71, 402; 78, 14; 78, 408; 78, 409; 79, 170; 80, 342; 81, 124; 82, 157; 83, 267; 89, 13; 89, 14; 94, 539; 95, 83; 95, 469; 99, 213; 99, 298; 102, 29; 102, 80; 102, 81; 102, 82; 102, 87; 103, 230; 104, 439; 108, 594; 108, 596; 122, 338; 132, 170; 132, 171; 132, 172.

§ 2620. Width of highways. The width of all public highways, except bridges, alleys, and lanes, and trails, shall be at least forty feet. The width of all private highways and by-roads, except bridges, shall be at least twenty feet; provided, however, that nothing in this act shall be so construed as to increase or diminish the width of either kind of highways already established or used as such. En. March 12, 1872. Am'd. 1873-4, 116. Rep. 1883, 5. En. Stats. 1883, 6.

Cal.Rep.Cit. 84, 6; 89, 18; 126, 581.

§ 2621. Vacation of highways. A road laid out and worked, and used as provided in this chapter, shall not be vacated or cease to be a highway until so ordered by the board of supervisors of the county in which said road

may be located; and no route of travel used by one or more persons over another's land shall hereafter become a public road or byway by use, or until so declared by the board of supervisors or by dedication by the owner of the land affected. En. March 12, 1872. Rep. 1883, 5. En. Stats. 1883, 6.

Cal.Rep.Cit. 71, 402; 81, 124; 89, 14; 93, 181; 94, 539; 108, 232.

§ 2622. Record of proceedings relating to roads and highways. The clerk of the board of supervisors shall include in the minutes of the board of supervisors all proceedings of the board relative to each road or road district, including orders for laying out, altering, and opening roads; he must also keep a road register, in which must be entered the number and name of each public highway in the county, a general reference to its terminal points and course, also the date of the filing of the petition or other papers, a memorandum of every subsequent proceeding in reference to it, with the date thereof, and the folio, and the volume of the minute book where it is recorded. En. Stats. 1883, 7.

§ 2623. Title to roads. Any road laid out by the board of supervisors as provided in this chapter, or used and worked as therein provided, shall not be vacated or cease to be a highway until so ordered by said board; and each county shall be deemed to have acquired title to any road opened over any land in conformity to any order made by its board of supervisors pursuant to this chapter after one year shall have elapsed from the time of making the order opening the road. En. Stats. 1891, 508.

ARTICLE II.

RULES AND RESTRICTIONS RESPECTING THE USE OF HIGHWAYS.

§ 2631. The public easement.
§ 2632. Adjoining owner may construct sidewalk.
§ 2633. May plant trees.
§§ 2634, 2635. (Repealed.)

§ 2631. The public easement. By taking or accepting land for a highway, the public acquire only the right of way, and the incidents necessary to enjoying and maintaining the same, subject to the regulations in this and the

Civil Code provided. En. March 12, 1872. Am'd. 1873-4, 116. Rep. 1883, 5. En. Stats. 1883, 7.

Cal.Rep.Ott. 71, 401; 81, 125; 81, 126; 108, 596.

Various acts relating to highways: See General Laws, title Highways.

§ 2632. **Adjoining owner may construct sidewalk.** Any owner or occupant of land may construct a sidewalk on the highway along the line of his land, subject, however, to the authority conferred by law on the board of supervisors and the commissioners of highways; and any person using such sidewalk with mule, horse, or team, without permission of the owner, is liable to such owner or occupant in the sum of five dollars for each trespass, and for all damages suffered thereby. En. March 12, 1872. Rep. 1883, 5. En. Stats. 1883, 7.

§ 2633. **May plant trees.** Any owner or occupant of land adjoining a highway not less than three rods wide, may plant trees in and along said highway on the side contiguous to his land. They must be set in regular rows, at a distance of at least twenty feet from each other, and not more than six feet from the boundary of the highway. If the highway is more than eighty feet wide, the row must not be less than six nor more than twelve feet from the boundary of the highway. Whoever willfully injures any of them is liable to the owner or to the occupant for the damage which is thereby sustained; provided, if, in the judgment of the board of supervisors, the whole width of such road is needed for use for highway purposes, the whole thereof may be so used. En. March 12, 1872. Rep. 1883, 5. En. Stats. 1883, 7. Am'd. 1893, 113.

§§ 2634, 2635. (Repealed.) En. March 12, 1872. Rep. 1883, 5.

ARTICLE III.

POWERS AND DUTIES OF HIGHWAY OFFICERS.

§ 2641. Road districts. Road commissioners.
§ 2642. Road overseers.
§ 2643. Supervisors, powers and duties of respecting roads.
§ 2643a. Protection from storm-waters and floods.
§ 2644. Report of labor on roads must accompany expense claims.
§ 2645. Duties of road commissioners.
§ 2646. Bids to maintain roads. (Repealed.)
§ 2647. Duties and powers of supervisors respecting roads.

§ 2641. **Road districts. Road commissioners.** The board of supervisors of the several counties shall divide their

respective counties into suitable road districts, and may change the boundaries thereof, and each supervisor shall be ex-officio road commissioner in his supervisor district, and shall see that all orders of the board of supervisors pertaining to the roads in his district are properly executed; provided, when in any county the members of the board of supervisors thereof are not elected by districts, it shall be the duty of such board, by proper order, to be entered in its records, to divide such county into supervisor districts to correspond with the number of members of such board, and to assign to each member thereof one of such districts, of which he shall be such road commissioner; when not otherwise provided by law, he shall receive for his services as such road commissioner twenty cents per mile, one way, for all distances actually traveled by him in the performance of his duties; provided, that he shall not, in any one year, receive more than three hundred dollars. En. Stats. 1883, 7. Am'd. 1887, 77; 1891, 474; 1893, 113.

Cal.Rep.Cit. 68, 67; 79, 474; 102, 404; 125, 211; 125, 212; 126, 623; 137, 518.

§ 2642. Road overseers. From and after the Monday following the first day of January, A. D. eighteen hundred and ninety-three, the office of road overseer shall be abolished; provided, that whenever in this code the words "road overseer" occur, they shall be taken and construed so as to read road commissioner. En. Stats. 1883, 8. Am'd. 1885, 94; 1887, 78; 1891, 474.

Cal.Rep.Cit. 70, 612; 126, 624.

§ 2643. Supervisors, powers and duties of respecting roads. The boards of supervisors of the several counties of the state shall have general supervision over the roads within their respective counties. They must by proper order:

1. Cause to be surveyed, viewed, laid out, recorded, opened, and worked, such highways as are necessary to public convenience, as in this chapter provided.

2. Cause to be recorded as highways all highways which have become such by usage, dedication or abandonment to the public, or by any other means provided by law, and to prepare and record proper deeds and titles thereto.

3. Abolish or abandon such as are not necessary.

4. Acquire the right of way over private property for the use of public highways, and for that purpose require the district attorney to institute proceedings, under title seven, part three, of the Code of Civil Procedure, and to pay therefor from the general road fund or the district road fund of the county.

5. Levy a property tax for road purposes.

6. Cause to be erected and maintained, at the intersections and crossings of highways, guide posts properly inscribed.

7. Cause the road tax collected each year to be apportioned to the several road districts entitled thereto, and kept by the county treasurer in separate funds.

8. Audit all claims on the funds set apart for highway purposes, and specify the fund, or funds, from which the whole or any part of any claim, or claims, must be paid.

9. In their discretion, they may provide for the establishment of gates on the public highways, in certain cases, to avoid the necessity of building road fences, and prescribe rules and regulations for closing the same, and penalties for violating said rules; provided, that the expense for the erection and maintenance of such gates shall in all cases be borne by the party or parties for whose immediate benefit the same shall be ordered.

10. For the purpose of sprinkling the roads in any part of the county with oil or water, the board of supervisors may erect and maintain waterworks and oil tanks and reservoirs, and for such purposes may purchase or lease real or personal property. The costs of such waterworks, oil tanks and reservoirs and the sprinkling of said roads with oil or water may be charged to the general county fund, the general road fund, or the district fund of the district or districts benefited.

Whenever it is determined by a two-thirds vote of the board of supervisors of any county that the public convenience and necessity demands the acquisition or construction of a road in excess of three miles in length the cost of which will be too great to pay out of any of the road funds of the county the board of supervisors may by a resolution passed by a two-thirds vote of the board of supervisors determine to acquire or construct such road and thereafter may proceed to acquire or construct such

road and if the cost of such road when constructed shall exceed five thousand dollars, such cost may be charged to the general county fund, the general road fund or the district fund of the district or districts benefited.

11. Whenever it shall be determined that any grading, graveling, macadamizing, ditching, sprinkling, or other work upon highways is necessary, and is to be done, and where the estimated cost of such work amounts to three hundred dollars, the board of supervisors must, by proper order, direct the county surveyor to make definite surveys of the proposed work, and to prepare profiles and cross-sections thereof, and to submit the same with the estimate of the amount or amounts of work to be done, and cost thereof, and with specifications thereof. Said report shall be prepared in duplicate, one copy to be filed in the surveyor's office, and the other to be filed with the clerk of the board of supervisors. The board upon receipt of such report must advertise for bids for the performance of the work specified. Such advertisement for bids must be published for two weeks in two newspapers, one published at the county seat and the other at a point nearest the proposed work. Such advertisement must be in the following form:

"Office of the clerk of the board of supervisors,
"——— County, ———, 190—.

"Sealed bids will be received by the clerk of the board of supervisors of ——— County, at his office, until ——— o'clock ——M., ———, ———, 190—, for ———, on ——— in ——— district, in ——— County.

"Specifications for this work are on file in the office of the said board, to which bidders are hereby referred.

"——— ———,
"Clerk of the board of supervisors
of the county ———,"

And such advertisement must also be posted, for at least two weeks prior to the opening of the bids for the proposed work, in three conspicuous places in the district or districts in which the proposed work lies, and one at the site of the proposed work. Bids must be inclosed in sealed envelope, addressed to the clerk of the board of supervisors, and must be indorsed, "Bids for ———," and must be delivered to said clerk prior to the hour specified in the advertise-

ment. The board shall publicly open and read such bids as may be submitted, and must award the contract for the work to the lowest bidder; unless it shall appear to the board that the bids are too high, and the work can be done more cheaply by day labor, in which case the bids must be rejected, and the work ordered done by the road commissioner, or commissioners, in whose district or districts, the work may be situated. In case the work shall be let by contract, monthly or quarterly payments may be made thereon upon the receipt of a certified estimate by the county surveyor of the amount of work done during the preceding month or quarter, to the extent of seventy-five per cent of the value of said work, the remaining twenty-five per cent being due on the completion of the work. The services of the surveyor in making such partial estimates must be paid for by the contractor. Upon the completion of the work, the county surveyor must examine the same, and if completed in accordance with the specifications thereof, he must submit to the board of supervisors a certificate over his signature and official seal to the effect that such work by the contractor therefor has been completed in accordance with the specifications therefor, and recommending its acceptance. The board shall thereupon audit the same and direct its payment out of the proper fund, or funds.

12. In their discretion, they may set apart on any public road or highway a strip of land, not exceeding six feet in width, for a side path; and make an order designating the width of such path, and cause the lines separating the path from the road to be located and marked by stakes or posts, placed at such distances apart as they shall deem proper. After said path has been set apart, and the lines separating the same from the road has been located and marked, as aforesaid, the use of the same is hereby restricted to pedestrians and riders of bicycles, and other vehicles propelled solely by the power of the rider. The expense of erecting and maintaining such path may be charged to the general county fund, the general road fund, and the district fund of the district or districts benefited. En. Stats. 1883, 8. Am'd. 1891, 474; 1893, 114; 1897, 248; 1901, 661; 1903, 70.

Cal.Rep.Cit. 71, 403; 80, 342; 89, 14; 90, 385; 126, 626. Subd. 2—99, 446. Subd. 3—89, 13. Subd. 4—80, 341. Subd. 11—102, 404.

§ 2643a. Protection from storm-waters and floods. Whenever any public road or highway is in danger of being damaged by storm-waters or floods on the same, the board of supervisors shall adopt such measures as may be necessary to prevent such damage, and may, by ordinance, establish a district, adopt a general plan of protection from storm-waters and floods therein, and may cause a part or all of the road taxes collected in such district to be apportioned to a fund and expended for such purpose, and they may also apportion to such fund and expend for such purpose an amount not exceeding ten per centum of the general road fund of the county, or they may at the time of levying taxes for general county purposes levy a special tax for such purpose, not exceeding fifty cents on each one hundred dollars of the taxable property in the district as shown by the last assessment roll, but no such special tax shall be levied upon any district until the proposition to levy the same has been submitted to the qualified electors of the district and received a majority of all the legal votes cast on said proposition. En. Stats. 1903, 80.

§ 2644. Report of labor on roads must accompany expense claims. No claim for labor performed in any road district shall be allowed by the board of supervisors unless the same be accompanied by a report showing where the labor was performed, the nature of the same, and the number of animals, and the kind of implements used. But if said labor shall be performed under the direction of a foreman or timekeeper, said foreman's or timekeeper's report shall cover all work performed under his direction, and shall be sufficient to warrant the payment of all claims for labor so performed. The board of supervisors shall have power, and it is hereby made its duty, to prescribe rules and blank forms, not inconsistent with the laws of this state, for the making of the reports herein required. En. Stats. 1883, 9. Am'd. 1887, 78. Rep. 1891, 476. En. Stats. 1897, 241.

§ 2645. Duties of road commissioners. Road commissioners, under the direction and supervision and pursuant to orders of the board of supervisors, must—

1. Take charge of the highways within their respective districts, and shall employ all men, teams, watering carts, and all help necessary to do the work in their respective

districts when the same is not let by contract; provided, that no road commissioners shall be interested, directly or indirectly, in any contract or work to be done in the road district under his charge and control.

2. Keep them clear from obstructions, and in good repair, and destroy, or cause to be destroyed, at least once a year, all thistles, Mexican cockleburs, of any kind, and all noxious weeds, growing or being on any portion of the public highways or public roads in their respective districts.

3. Cause banks to be graded, bridges and causeways to be made when necessary, keep the same in good repair, and renew them when destroyed. En. March 12, 1872. Rep. 1873-4, 117. Am'd. 1880, 67. Rep. 1883, 5. En. Stats. 1883, 9. Am'd. 1889, 339; 1891, 476; 1893, 115.

Cal.Rep.Cit. 78, 495; 90, 385; 102, 38; 102, 404; 126, 624; 126, 626.

Department of highways: See General Laws, title Highways.

Bureau of highways: See General Laws, title Highways.

§ 2646. Bids to maintain roads. (Repealed.) En. March 12, 1872. Rep. 1873-4, 117. Am'd. 1880, 68. Rep. 1883, 5. En. Stats. 1887, 149. Am'd. 1891, 477. Rep. 1893, 115.

Cal.Rep.Cit. 102, 38.

§ 2647. Duties and powers of supervisors respecting roads. Whenever any right of way for a public highway has been or may hereafter be conveyed to a county without consideration, other than that the said county shall construct and maintain a highway thereon and shall construct road fences along the lines thereof; and said right of way shall have been or shall hereafter be accepted and declared by the board of supervisors of the county a public highway, the said board may, in its discretion, provide for the building of road fences along the said right of way, at any time within five years from the date of such conveyance to the county. The cost of such fences may be charged to and paid from the general county fund, the general road fund, or the district fund of the district or districts benefited; provided, that not to exceed one half of the cost of any fences so constructed shall be paid from the general county fund. En. March 12, 1872. Am'd. 1873-4, 117; 1880, 68. Rep. 1883, 5. En. Stats. 1901, 633.

§ 2648. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 118. Rep. 1880, 76.

§ 2649. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 118; 1880, 69. Rep. 1883, 5.

§ 2650. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 119; 1880, 69. Rep. 1883, 5.

ARTICLE IV.

HIGHWAY TAXES.

§ 2651. General road fund.
§ 2652. Road poll tax.
§ 2653. Property highway tax.
§ 2654. Assessment and collection of property highway tax.
§ 2655. Taxes, to be expended in districts.

§ 2651. General road fund. The board of supervisors may, at the meeting at which they are required to levy the property tax for road purposes, establish a general road fund and order to be apportioned thereto an amount not exceeding thirty-five per centum of the aggregate road tax collected from all sources. The moneys in such general road fund shall be applied to the following purposes only: First, the payment of the expense of general county road improvements in which the inhabitants of all of the districts within the county are interested; second, the assistance of weak and impoverished districts in keeping roads in repair; third, the payment of such demands as are payable by law out of the general road fund; provided, that no greater proportion of such general road fund shall be used or expended in any road district than the amount collected in such road district, unless the board of supervisors shall by a two-thirds vote of all its members authorize the expenditure therein of such greater proportion, and the said board shall have no power to create a debt on any road district in excess of the estimated amount of receipts from said district for the current year. The moneys in such general road fund at the end of the fiscal year, after the payment of all warrants drawn on such fund, shall be reapportioned by the county auditor to the district fund of the several road districts in which it was collected.

All contracts, authorizations, allowances, payments, and

liabilities to pay, made or attempted to be made in violation of this act, shall be absolutely void, and shall never be the foundation or basis of a claim against the treasury of such county. And all officers of said county are charged with notice of the condition of the treasury of said county, and the extent of the claims against the same. All supervisors, and any other officer authorizing or aiding to authorize, or auditing or allowing any claim or demand upon or against said treasury, or any fund thereof, in violation of any of the provisions of this act, shall be liable in person, and upon their several official bonds, to the person or persons damaged by such illegal authorization to the extent of his loss by reason of the non-payment of his claim. The treasurer paying any claim authorized, allowed, or audited in violation of this provision shall be liable on his official bond to refund the same to the county treasury. En. March 12, 1872. Rep. 1873-4, 120; 1880, 76. En. Stats 1883, 10. Am'd. 1901, 655.

Cal.Rep.Cit. 75, 505; 78, 495; 137, 518.

§ 2652. Road poll tax. The board of supervisors may, annually, at any regular meeting held between the first days of January and March of each year, levy on each male person over twenty-one and under fifty-five years of age found in each road district during the time for the collection of road poll taxes for that year, excepting all persons who were honorably discharged from service in the army or navy of the United States at any time within the first day of April in the year of our Lord eighteen hundred and sixty-one, and the first day of September in the year of our Lord eighteen hundred and sixty-five, an annual road poll tax not exceeding three dollars; and from every such person not above excepted, in a road district, who has not paid the same in some other district, must be collected the amount of road poll tax so levied. Said road poll tax shall be collected by the county assessor in the same manner that state poll taxes are collected, and all remedies given by law for the collection of state poll taxes shall apply to and be in force for the collection of road poll taxes. Road poll-tax receipts, in blank, signed, and numbered in the same manner that other poll-tax receipts are signed and numbered, shall be delivered by the auditor of the county to said county assessor on or before the first Monday of March of each year; and said assessor shall be

charged with the amount of such road poll-tax receipts delivered to him, and be credited with those returned, and shall settle with the auditor, and pay over the amounts collected, in the manner provided by section thirty-eight hundred and fifty-three of this code. A sum not exceeding thirty-five per cent of all road poll taxes so collected may be apportioned to the general road fund, and the balance shall be apportioned to the several districts of the county from which said road poll tax was collected. En. March 12, 1872. Rep. 1873-4, 120; 1880, 76. En. Stats. 1883, 10. Am'd. 1889, 353; 1891, 478.

Cal.Rep.Cit. 78, 495; 104, 66; 104, 67.

§ 2653. **Property highway tax.** The board of supervisors must each year, at the meeting at which they are required to levy the property tax for county purposes, estimate the probable amount of property tax for highway purposes which may be necessary for the ensuing year, over and above the road tax, and must regulate and fix the amount of property highway tax, and levy the same thereby; provided, that said property tax for highway purposes shall not exceed the sum of forty cents upon each one hundred dollars of assessable property in any one year. En. March 12, 1872. Am'd. 1873-4, 120; 1877-8, 641; 1880, 69. Rep. 1883, 5. En. Stats. 1883, 11.

Cal.Rep.Cit. 78, 495.

§ 2654. **Assessment and collection of property highway tax.** The annual property tax for road purposes must be levied by the board of supervisors at their session when the tax is by them levied for county purposes. This property road tax, when levied, must be annually assessed and collected by the same officers and in the same manner as other state and county taxes are levied, assessed, and collected, and turned over to the county treasurer for the use of the road districts from which it is respectively collected. En. Stats. 1873-4, 38. Rep. 1880, 76. En. Stats. 1883, 11.

Cal.Rep.Cit. 96, 636; 104, 67; 137, 518; 137, 519.

§ 2655. **Taxes to be expended in districts.** All property road tax and road poll tax collected in each road district shall be expended for road purposes within the district in which it is collected, subject to the provisions of sections

two thousand six hundred and fifty-one and two thousand six hundred and fifty-two. En. Stats. 1883, 12.

Cal.Rep.Cit. 137, 518.

§ 2656. [No such section.]

§ 2657. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 120; 1880, 70. Rep. 1883, 5.

§ 2658. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 120. Rep. 1880, 76.

§§ 2659-2662. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 121; 1880, 70. Rep. 1883, 5.

§ 2663. (Repealed.) En. March 12, 1872. Am'd. 1880, 71. Rep. 1883, 5.

§ 2664. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 122; 1880, 71. Rep. 1883, 5.

ARTICLE V.

PERFORMANCE OF HIGHWAY LABOR AND COMMUTATION.

§ 2671. Employers responsible for road taxes assessed against employees.

§ 2671. Employers responsible for road taxes assessed against employees. Corporations, or other employers of persons in any road district subject to road tax, are chargeable for the road poll tax assessed against their employees to the extent of any credit in their hands not exceeding such tax; provided, the road overseer shall first give notice to such employer, or the managing agent of such corporation, and from the time of such notice, the amount of any credit in his hands, or that shall thereafter accrue sufficient to satisfy said tax, shall be paid to the road tax collector, whose receipt shall be evidence in bar of the prosecution of any action by the employee against the principal for the recovery of the same. En. Stats. 1883, 12.

§§ 2672-2679. [No such sections.]

§ 2680. (Repealed.) En. March 12, 1872. Rep. 1883, 5.

ARTICLE VI.

LAYING OUT, ALTERING, AND DISCONTINUING ROADS.

§ 2681. Who may apply to alter, discontinue, or lay out.
§ 2682. Petition.
§ 2683. Bond.
§ 2684. Viewers.
§ 2685. Duties of viewers.
§ 2686. Report of viewers.
§ 2687. Viewers and surveyors, how paid.
§ 2688. Proceedings of board in hearing report.
§ 2689. Proceedings on approval of report. Damages.
§ 2690. Rejection of damages. Proceedings to procure right of way.
§ 2691. Payment of awards and expenses.
§ 2692. Private roads, how opened.
§ 2693. Record of transfer of right of way.
§ 2694. Roads crossing railroads, canals, and ditches.
§ 2695. Fences to be removed, how.
§ 2696. Acquiring land, proceedings for.
§ 2697. No such section.
§§ 2698-2702. (Repealed.)

§ 2681. Who may apply to alter, discontinue, or lay out. Any ten freeholders who will be accommodated by the proposed road, two of whom must be residents of the road district wherein any part of the proposed road is situated, and who are taxable therein for road purposes, may petition, in writing, the board of supervisors to alter or discontinue any road, or to lay out a new road therein; provided, that when a road is petitioned for upon the dividing line between two counties, the same course shall be pursued as in other cases, except that a copy of the petition shall be presented to the board of supervisors of each county, who shall appoint viewers, to act jointly, and report to their respective boards the action of such viewers; provided, further, that all such roads shall be at least forty feet wide. En. March 12, 1872. Am'd. 1880, 71. Rep. 1883, 5. En. Stats. 1883, 12. Am'd. 1891, 64.

Cal.Rep.Cit. 68, 59; 71, 403; 75, 609; 79, 379; 80, 342; 89, 14; 95, 242; 95, 243; 110, 98; 180, 635.

§ 2682. Petition. The petition must set forth the general route of the road to be abandoned, discontinued, altered, laid out, or constructed, and the names of the persons over whose land the same is to run, if known, and if not known, that fact must be stated. En. March 12, 1872. Rep. 1883, 5. En. Stats. 1883, 12. Am'd. 1887, 169; 1891, 509.

Cal.Rep.Cit. 75, 606; 95, 242; 95, 243.

§ 2683. **Bond.** The petitioners must accompany the petition with a good and sufficient bond, to be approved by the board of supervisors, in double the amount of the probable cost of the viewing and laying out or altering of any road, conditioned that the bondsmen will pay all the costs of viewing and surveying in case the prayer is not granted. En. March 12, 1872. **Rep.** 1883, 5. En. Stats. 1883, 13.

Cal.Rep.Cit. 75, 606; 95, 240; 107, 533.

Viewing and surveying: See post, sec. 2686, subd. 6.

§ 2684. **Viewers.** Upon filing such petition and bond, the board of supervisors may, if they deem it advisable, appoint three viewers, one of whom must be a surveyor, to view and survey any proposed alteration of an old or opening of a new road, and submit to the board an estimate of the change, alteration, or opening, including the purchase of the right of way, and their views of the necessity thereof. En. March 12, 1872. **Rep.** 1883, 5. En. Stats. 1883, 13. **Am'd.** 1891, 65; 1893, 100.

§ 2685. **Duties of viewers.** The road viewers must be disinterested citizens of the county, but not petitioners. They must be sworn to discharge their duties faithfully, must view and lay out the proposed alterations or new road over the most practicable route, and in the performance of this duty they shall be required to make the proposed alterations or new road over the same lands mentioned in the petition, but shall not be confined to any particular route indicated therein. The viewers must notify the resident owner or agent of the owner of the land over which it passes of the proposed route. A majority number of the viewers, providing one shall be a surveyor, shall be competent to act in all matters pertaining to their duties mentioned in this chapter. The board of supervisors, in making the order appointing viewers, may, in their discretion, direct said viewers to first view the proposed road, and if, in the opinion of the viewers, the road is impracticable, the said viewers shall discontinue further proceedings in the matter, and report accordingly. En. March 12, 1872. **Am'd.** 1873-4, 122; 1880, 71. **Rep.** 1883, 5. En. Stats. 1883, 13. **Am'd.** 1887, 169.

Cal.Rep.Cit. 75, 608; 136, 477.

Part 3 Title 6

§ 2686. Report of viewers. When the view and survey of the proposed alteration or new road is completed, the viewers must report to the board of supervisors—

1. The course, termini, length, and probable cost of construction of the proposed road.

2. The estimate of damage to the owner of any land over which it is proposed to run the road.

3. The names of land owners who consent to give the right of way, and their written consent thereto.

4. The names of land owners who do not consent, and the amount of damage claimed by each; provided, that when there are non-resident land owners, and no agent upon the land upon whom notice can be served, such non-resident land owners shall be considered as non-consenting land owners, unless their written consent shall have been obtained.

5. Such other facts bearing upon the subject of importance to be known by the board of supervisors.

6. They may also, in their discretion, or by order of the board of supervisors, report upon the feasibility and cost of any other route than the one petitioned for which would subserve the same purposes; and also report as to the necessity of a greater or the practicability of a less width of road than petitioned for. En. March 12, 1872. Rep. 1873-4, 123. 1880, 76. En. Stats. 1883, 13.

Cal.Rep.Cit. 68, 62; 75, 608; 83, 514; 136, 477.

§ 2687. Viewers and surveyors, how paid. The viewers must be paid not to exceed three dollars each per day for their services out of the road fund of the district through which the road passes, and the surveyor shall receive a per diem not to exceed ten dollars for the time occupied in running out and mapping the road, and making the plat and field notes, which must be filed before he receives his compensation. En. March 12, 1872. Am'd. 1873-4, 123; 1880, 71. Rep. 1883, 5. En. Stats. 1883, 14.

§ 2688. Proceedings of board in hearing report. The board of supervisors at the next meeting after the filing of the report or at the time when the report is filed (if then in session), must fix a day for hearing the same; and must give notice to such non-consenting land owners

of the time and place of such hearing, by publication, for at least two successive weeks before such hearing, in a newspaper, to be designated by the board, published in the county; but if there be no newspaper published in the county, then by posting notices, one at a conspicuous place on the land, and one at the courthouse, at least two weeks before such hearing. Said notice shall intelligibly describe the road to be abandoned, discontinued, altered, laid out, or constructed, and the lands over which the same is to run, and the names of the owners of such land when known, and if not known, that fact must be stated. The board must, on the day fixed for the hearing, or to which it may be postponed or continued, hear the evidence offered by parties interested for or against the proposed alterations or new road; and must ascertain and by order declare the amount of damage awarded to each non-consenting land owner over whose land they shall order the road to be opened, whether known or unknown, and declare the report of the viewers to be approved or rejected, in whole or in part. En. March 12, 1872. Am'd. 1873-4, 123; 1880, 72. Rep. 1883, 5. En. Stats. 1883, 14. Am'd. 1891, 509.

Cal.Rep.Cit. 104, 393.

Consenting owners: See sec. 2686, supra.

§ 2689. Proceedings on approval of report. Damages. If the board approve the report, and there are no non-consenting land owners, the road must by order be declared a public highway, and the same opened to the public. The board, upon making each and every order establishing the location or alteration of any road or highway, shall order the amount of damages sustained by each and every person owning or claiming lands, or any improvements thereon or affected thereby, as finally fixed and assessed by them, to be set apart in the treasury out of the proper fund, to be paid to the proper owner or claimant if known, and to be kept for proper claimant or owner if unknown, and to be paid to him or her upon showing or establishing their right or title to such lands or improvements; provided, that any person interested in said road may place in the treasury the whole or any part of the amount necessary to meet the demands made upon such fund by said orders of the board. Any moneys

so set apart as herein provided for, shall be returned to the person from whom or the fund from which it was taken or set apart, if not paid to or accepted by the proper owner or claimant. If the awards are all accepted, the road must be declared a public highway, and be opened as before provided. En. Stats. 1883, 14. Am'd. 1887, 170.

Cal.Rep.Cit. 68, 60; 106, 571.

§ 2690. Rejection of damages. Proceedings to procure right of way. If any award of damages is not accepted within ten days of the date of the award, it shall be deemed as rejected by the land owners. The board must by order direct proceedings to procure the right of way to be instituted by the district attorney of the county, under and as provided in title seven, part three, of the Code of Civil Procedure, against all non-accepting land owners, and when thereunder the right of way is procured the road must be declared a public highway, and opened as herein provided. In such suit no informality in the proceedings of the board shall vitiate said suit, but the said order of the board directing the district attorney to bring suit shall be conclusive proof of the regularity thereof; and the said suit shall be determined by the court or jury in accordance with the rights of the respective parties, as shown in court independent of said proceedings before said board. En. Stats. 1883, 14. Am'd. 1887, 170.

Cal.Rep.Cit. 68, 60; 83, 511; 83, 513; 96, 93; 102, 488; 110, 98; 118, 681; 129, 406; 129, 407; 130, 635; 136, 478.

Notification of owners: See sec. 2688, supra.

Eminent domain, generally: See Code Civ. Proc., secs. 1237 et seq.

§ 2691. Payment of awards and expenses. All awards by agreement, ascertainment by the board or the proper court, and all expenses of viewing, laying out, or altering any road, must be paid out of the road fund of the district, except that which may be paid by interested parties on the order of the board of supervisors, and except also that whenever it appears to the board of supervisors that any road district would be unreasonably burdened by the payment of such awards and expenses, the board of supervisors, by a two-thirds vote, may cause a portion of such awards and expenses to be paid from the general

road fund; provided, however, that not to exceed ten per cent of the general road fund shall be devoted to such purposes in any one fiscal year. If the road lies in more than one district, the supervisors must proportionately divide the awards and other costs between said districts; provided, however, that when money is paid out by any interested person the same may be given to the credit of either fund, at the discretion of the board. En. Stats. 1883, 15. Am'd. 1887, 170; 1893, 53.

§ 2692. Private roads, how opened. Private or by-roads may be opened, laid out, or altered for the convenience of one or more residents or freeholders of any road district in the same manner as public roads are opened, laid out, or altered, except that only one petitioner shall be necessary, who must be either a resident or freeholder in said road district; and the board of supervisors may for like cause order the same to be viewed, opened, laid out, or altered, the person for whose benefit said road is required paying the damages awarded to land owners, and keeping the same in repair; provided, that the petitioners must accompany the petition with the bond mentioned in section two thousand six hundred and eighty-three, conditioned as provided in said section, and with a further condition that the bondsmen will pay to the person over whose land said road is sought to be opened his necessary costs and disbursements in contesting the opening of such road, in case the petition be not granted, and the road finally not opened; provided, that all private roads opened or laid out under the provisions of this act shall be upon section or half-section lines wherever practicable. En. Stats 1883, 15.

Cal.Rep.Cit. 71, 403; 83, 511; 102, 433; 107, 533; 107, 534.

§ 2693. Record of transfer of right of way. In all cases where consent to use the right of way for a highway is voluntarily given, purchased, or condemned, and paid for, either an instrument in writing conveying the right of way and incidents thereto, signed and acknowledged by the party making it, or a certified copy of the decree of the court condemning the same, must be made and filed and recorded in the office of the recorder of the county, in which the land so conveyed or condemned must be particularly described. En. Stats. 1883, 15.

§ 2694. Roads crossing railroads, canals, and ditches. Whenever highways are laid out to cross railroads, canals, or ditches, on public lands, the owners or corporations using the same must, at their own expense, so prepare their roads, canals, or ditches, that the public highway may cross the same without danger or delay. And when the right of way for a public highway is obtained through the judgment of any court over any railroad, canal, or ditch, no damages must be awarded for the simple right to cross the same. En. Stats. 1883, 15.

§ 2695. Fences to be removed, how. When the alteration of an old or the opening of a new road makes it necessary to remove fences on land given, purchased, or condemned, by order of a court for road or highway purposes, notice to remove the fences must be given by the road overseer to the owner, his occupant or agent, or by posting the same on the fence; and if the same is not done within ten days thereafter, or commenced and prosecuted with due diligence, the road overseer may cause it to be carefully removed at the expense of the owner, and recover of him the cost of such removal, and the fence material may be sold to satisfy the judgment. En. Stats. 1883, 15.

Cal.Rep.Cit. 77, 17; 89, 14.

§ 2696. Acquiring land, proceedings for. Whenever it shall become necessary to acquire land in order to raise the banks along any stream or remove obstructions therefrom, or widen, change, deepen or straighten their channels for the purpose of protecting any public road or highway, or to construct flumes, ditches or canals, or make other improvements for the purpose of carrying off storm-waters or floods to a place of safety, the board must, by order, direct proceedings to procure land necessary for such purpose to be instituted by the district attorney of the county, in the name of the county, under and as provided in title seven of part three of the Code of Civil Procedure. En. Stats. 1887, 150. Am'd. 1903, 79.

§ 2697. [No such section.]

§ 2698. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 123; 1880, 72. Rep. 1883, 5.

Cal.Rep.Cit. 70, 435.

§§ 2699-2702. (Repealed.) En. March 12, 1872. Rep. 1883, 5.

§ 2703. (Repealed.) En. March 12, 1872. Am'd. 1880, 72. Rep. 1883, 5.

§ 2704. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 124. Rep. 1880, 76.

§ 2705. (Repealed.) En. March 12, 1872. Rep. 1883, 5.

§§ 2706-2708. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 124; 1880, 72. Rep. 1883, 5.

Cal.Rep.Cit. 70, 435.

§ 2709. (Repealed.) En. March 12, 1872. Rep. 1883, 5.

§ 2710. (Repealed.) En. March 12, 1872. Am'd. 1880, 73. Rep. 1883, 5.

ARTICLE VII.

ERECTION AND MAINTENANCE OF BRIDGES.

§ 2711. Bridges, how maintained, and by whom.
§ 2712. When aid may be given by county for bridge.
§ 2713. Construction and repair of bridges to be let out by contract.
§ 2714. When one overseer fails to act, who may repair bridge.
§ 2715. When supervisors must repair bridge.
§ 2716. Semi-annual meetings for highway and bridge purposes.
§§ 2717-2723. No such sections.
§§ 2724-2731. (Repealed.)

§ 2711. **Bridges, how maintained, and by whom.** All public bridges, not otherwise specially provided for, are maintained by the road district in which they are situate, the districts which they unite, and the county at large, in the same manner as highways, and under the management and control of the road overseer and the board of supervisors, the expense of constructing, maintaining, and repairing the same being primarily payable out of the road fund of the district in the hands of the county treasurer, and from road taxes. En. March 12, 1872. Am'd. 1880, 73. Rep. 1883, 5. En. Stats. 1883, 16.

Cal.Rep.Cit. 137, 206.

§ 2712. **When aid may be given by county for bridge.** Whenever it appears to the board of supervisors that any road district is or would be unreasonably burdened by the expense of constructing, or by the maintenance and repairs of any bridge or tunnel connecting or forming a part of a road, or the purchase of toll roads, they may, in their discretion, cause a portion of the aggregate cost or expense to be paid out of the general road fund of the county, or by vote of two thirds of the board of

supervisors, said board may, in their discretion, order a portion of the cost of construction and repairs of bridges and tunnels connecting or forming a part of a road, or a portion of the cost of the purchase of toll roads, to be paid out of the county general fund as well as the general road fund. En. March 12, 1872. Rep. 1883, 5. En. Stats. 1883, 16. Am'd. 1887, 115; 1901, 599; 1903, 18.

Cal.Rep.Cit. 78, 496.

§ 2713. **Construction and repair of bridges to be let out by contract.** No bridge, the cost of construction or repair of which will exceed the sum of two hundred dollars, must be constructed or repaired except on the order of the board of supervisors. When ordered to be constructed or repaired, the contract therefor may, in their discretion, be let out, and if let, it must be after reasonable notice given by the board of supervisors, by publication at least once a week for two weeks in a county newspaper; and if no paper is published in said county, then by three posted notices, one at the courthouse, one at the point to be bridged, and one at some other neighboring place in the county. All bids shall be sealed; they shall be opened at the time specified in the notice, and the contract awarded to the lowest responsible bidder. The board may, however, reject any and all bids. The contract and bond for its performance must be entered into and approved by the board of supervisors; except, however, in cases of great emergency, by the unanimous consent of the whole board they may proceed at once to replace or repair any and all structures, of whatever nature, without notice. Bridges crossing the line between counties must be constructed by the counties into which such bridges reach, and each of the counties into which any such bridge reaches shall pay such portion of the cost of such bridge as shall have been previously agreed upon by the boards of supervisors of said counties. En. March 12, 1872. Rep. 1883, 5. En. Stats. 1883, 16.

Cal.Rep.Cit. 134, 561; 137, 206; 137, 209.

Acts relating to construction of bridges: See General Laws, title Bridges.

§ 2714. **When one overseer fails to act, who may repair bridge.** If the road overseer of one district, after five

days' notice from the overseer of an adjoining district to aid in the repair of a bridge in which each are interested, fails so to aid, the one giving notice may make the necessary repairs, and must be allowed a pro rata compensation therefor by the board of supervisors out of the road fund of the defaulting district. Bridges crossing the line between cities and towns and road districts must be constructed and maintained, and the expenses thereof borne equally by the cities or towns from the road fund of the road districts into which such bridges reach. En. March 12, 1872. Am'd. 1873-4, 126; 1880, 74. Rep. 1883, 5. En. Stats. 1883, 17.

§ 2715. **When supervisors must repair bridge.** If the overseer of any road district, chargeable with the repair of a bridge, fails to make the needed repairs, after being informed that a bridge is impassable or unsafe, and is requested to make the same by two or more freeholders of the district in which it is situate, or the two districts which it unites, the freeholders may represent the facts to the board of supervisors, who, upon being satisfied that the bridge is unsafe, must cause the same to be repaired, and must pay therefor from the funds of the district chargeable therewith, or, if deemed necessary, from the general road fund. En. Stats. 1883, 17.

§ 2716. **Semi-annual meetings for highway and bridge purposes.** The supervisors may appoint, semi-annually, a special meeting, at which the road overseers, on days set apart for their respective districts, must be present; and at such special meetings so appointed the supervisors must hear highway and bridge reports and complaints from officers and citizens; after which such orders must be made and such action had regarding the same as the public welfare demands. En. Stats. 1883, 17.

Cal.Rep.Cit. 118, 495; 137, 206.

§§ 2717-2723. [No such sections.]

§§ 2724-2726. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 126; 1880, 74. Rep. 1883, 5.

§§ 2727, 2728. (Repealed.) En. March 12, 1872. Rep. 1883, 5.

§ 2729. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 127; 1880, 75. Rep. 1883, 5.

§ 2730. (Repealed.) En. March 12, 1872. Rep. 1883, 5.

ARTICLE VIII.

OBSTRUCTIONS AND INJURIES TO HIGHWAYS.

§ 2731. Removal of encroachments.
§ 2732. Notice to remove encroachments.
§ 2733. Penalty for neglect.
§ 2734. If encroachment denied, action for nuisance.
§ 2735. If encroachment not denied, how removed.
§ 2736. Penalty for leaving open gates or riding off the road.
§ 2737. Penalty for obstruction or injury.
§ 2738. Penalty for injuring mile-stone or guide-post.
§ 2739. Removal of fallen trees.
§ 2740. Unauthorized felling of trees.
§ 2741. Notice on bridges and penalty for disregarding.
§ 2742. Destroying shade or ornamental trees.
§ 2743. Recovery and application of penalties and forfeitures.
§ 2744. Service of notice by publication on non-residents.

§ 2731. Removal of encroachments. If any highway duly laid out or erected is encroached upon by fences, buildings, or otherwise, the road overseer of the district may, orally or in writing, require the encroachment to be removed from the highway. En. March 12, 1872. Am'd. 1873-4, 127; 1880, 75. Rep. 1883, 5. En. Stats. 1883, 17.

Cal.Rep.Cit. 77, 16; 90, 385; 99, 445; 99, 446; 126, 580; 136, 549.

§ 2732. Notice to remove encroachments. Notice must be given to the occupant or owner of the land, or person causing or owning the encroachment, or left at his place of residence if he be known to the person giving such notice and reside in the county, if not, it must be posted on the encroachment, specifying the breadth of the highway, the place and extent of the encroachment, and requiring him to remove the same within ten days. En. March 12, 1872. Am'd. 1873-4, 128; 1880, 75. Rep. 1883, 5. En. Stats. 1883, 17.

Cal.Rep.Cit. 99, 445; 99, 447.

§ 2733. Penalty for neglect. If the encroachment is not removed, or commenced to be removed and diligently prosecuted, prior to the expiration of the ten days from the service or posting the notice, the one who caused, owns, or controls the encroachment forfeits ten dollars for each day the same continues unremoved. If the encroachment is such as to effectually obstruct and prevent the use of the road for vehicles, the overseer must forthwith remove the same. En. Stats. 1883, 18.

Cal.Rep.Cit. 136, 550.

§ 2734. If encroachment denied, action for nuisance. If the encroachment is denied, and the owner, occupant, or person controlling the matter or thing charged with being an encroachment refuses either to remove or permit the removal thereof, the road overseer must commence in the proper court an action to abate the same as a nuisance; and if he recovers judgment, he may, in addition to having the same abated, recover ten dollars for every day such nuisance remained after notice, and also his costs in said action. En. Stats. 1883, 18.

Cal.Rep.Cit. 71, 86; 71, 87; 77, 16; 77, 17; 77, 18; 99, 445; 99, 446; 99, 447; 126, 580; 136, 549.

Action to abate nuisance: Code Civ. Proc., sec. 731. Nuisance: Civ. Code, secs. 3479-3503; Pen. Code, secs. 370-374.

§ 2735. If encroachment not denied, how removed. If the encroachment is not denied, but is not removed for five days after the notice is complete, the road overseer may remove the same at the expense of the owner, occupant, or person controlling the same, and recover his costs and expenses, as also for each day the same remained after notice was complete, the sum of ten dollars, in an action for that purpose. En. Stats. 1883, 18.

Cal.Rep.Cit. 136, 549.

§ 2736. Penalty for leaving open gates or riding off the road. No gates must be allowed on any public highway except such as are allowed by the board of supervisors, in accordance with the provisions of subdivision eleven, section two thousand six hundred and forty-three, and when so allowed they must be maintained at the expense of the owner or occupant at whose request or for whose benefit they were erected. If such expense is not paid, the gate must be removed as an obstruction. Any one who leaves open such gate, or willfully and unnecessarily rides over ground adjoining the road on which the gate is erected, forfeits to the injured party treble damages. En. Stats. 1883, 18.

§ 2737. Penalty for obstruction or injury. Whoever obstructs or injures any highway, or diverts any watercourse thereon, or drains water from his land upon any highway, to the injury thereof, by means of ditches or dams, is

liable to a penalty of ten dollars for each day such obstruction or injury remains, and must be punished as provided in section five hundred and eighty-eight of the Penal Code. Any person, persons, or corporation who shall be storing or distributing water for any purpose, and shall permit the water to overflow or saturate, by seepage, any highway, to the injury thereof, shall, upon notification of the road commissioner of the district where such overflow or seepage occurs, repair the damages occasioned by such overflow or seepage; and should such repair not be made within a reasonable time by such person, persons, or corporation, said road commissioners shall make such repairs, and recover the expense thereof from such person, persons, or corporation, in an action at law. All persons excavating irrigation, mining, or draining ditches across public highways shall be required to bridge said ditches at such crossings, and upon neglect to do so, the road commissioner for that road district shall construct the same and recover the cost of constructing said bridge or bridges of such persons by action, as provided in this section; provided, that the supervisors of any county may construct and maintain bridges over any and all ditches used exclusively for irrigation purposes, and which cross public highways in the county over which they have authority, and may, with the consent of the owners of such ditches, declare any and all such bridges to be public property, and maintain and keep the same in repair at the expense of such county. And whoever willfully injures any public bridge is hereby declared to be guilty of a misdemeanor, and is also liable for actual damages for such injury, to be recovered by the county in a civil action; provided further, that every person who knowingly allows the carcass of any dead animal (which animal belonged to him at the time of its death) to be put or to remain within one hundred feet of any street, alley, public highway, or road in common use, and every person who puts the carcass of any dead animal within one hundred feet of any street, alley, highway, or road in common use, or who shall deposit on any highway any refuse or waste tin, sheet iron, or broken glass, is guilty of a misdemeanor. En. Stats. 1888, 18. Am'd. 1897, 217.

Cal.Rep.Cit. 68, 360; 136, 550.

§ 2738. Penalty for injuring mile-stone or guide-post. Whoever removes or injures any mile-board, or mile-stone, or guide-post, or any inscription on such, erected on any highway, is liable to a penalty of ten dollars for every such offense, and punishable as provided in section five hundred and ninety of the Penal Code. It shall be the duty of the board of supervisors to cause guide-posts, with suitable inscriptions thereon, to be erected at all road crossings and forks of roads outside of any corporate limits. En. Stats. 1883, 19.

§ 2739. Removal of fallen trees. Any person may notify the occupant or owner of any land from which a tree or other obstruction has fallen upon any highway to remove such tree or obstruction forthwith. If it is not so removed, the owner or occupant is liable to a penalty of one dollar for every day thereafter till it is removed, and the cost of removal. En. Stats. 1883, 19.

§ 2740. Unauthorized felling of trees. Whoever cuts down a tree so that it falls into any highway must forthwith remove the same, and is liable to a penalty of ten dollars for every day the same remains in such highway. En. Stats. 1883, 19.

Cal.Rep.Cit. 136, 550.

§ 2741. Notice on bridges and penalty for disregarding. Road overseers must, when ordered by the board of supervisors so to do, put up on bridges under their charge notices that there is "Five dollars fine for riding or driving on this bridge faster than a walk." Whoever thereafter rides or drives faster than a walk on such bridge is liable to pay five dollars for each offense. En. Stats. 1883, 19.

§ 2742. Destroying shade or ornamental trees. Whoever digs up, cuts down, or otherwise maliciously injures or destroys any shade or ornamental tree on any highway, unless the same is deemed an obstruction by the road overseer, and removed under his direction, forfeits one hundred dollars for each such tree. En. Stats. 1883, 19.

Injuries to highways, etc.: Pen. Code, sec. 588.

§ 2743. Recovery and application of penalties and forfeitures. All penalties or forfeitures given in this chapter, and not otherwise provided for, must be recovered by

the road overseer or commissioner of the respective road districts by suit in the name of the county in which said road district is situated, and be paid into the road fund of his district. En. March 12, 1872. Am'd. 1873-4, 128; 1880, 76. Rep. 1883, 5. En. Stats. 1883, 19.

Cal.Rep.Cit. 71, 87; 99, 213; 136, 549.

§ 2744. Service of notice by publication on non-residents. When notice is required to be served upon non-resident land owners under any of the provisions of this act, such notice shall be deemed to have been served by publication, as authorized by the board of supervisors; and for all purposes, non-resident land owners upon whom personal service cannot be made within the county shall be treated as non-consenting land owners. En. March 12, 1872. Rep. 1883, 5. En. Stats. 1883, 19.

Cal.Rep.Cit. 137, 518.

The act reconstructing this chapter contained the following preliminary and closing sections:

Section 1. Chapter two of title six of part three of an act of the legislature of the state of California, entitled "An act to establish a Political Code," approved March 12, 1872, and each and every section of said chapter two, are hereby repealed, and a new chapter two of title six of part three of said Political Code is hereby enacted and substituted in place of said repealed chapter, to read as follows:

Sec. 2. All laws concerning roads and highways in conflict with this act, and all laws applicable to particular counties of this state, concerning roads and highways, are hereby repealed; provided, that any proceedings commenced before this act takes effect for the alteration, establishment, or abandonment of any road or highway, may be conducted under the provisions of the law under which said proceedings were commenced; provided further, that nothing herein contained shall be deemed to authorize the levy or collection of a road poll tax, or property road tax, within municipalities existing under the laws of this state, wherein work and improvements upon the streets is done by virtue of any law relating to street work and improvements within such municipality. Nor shall any such incorporated city or towns be by the supervisors of the county included or embraced in any road district by them established under this act.

ARTICLE IX.

PERMANENT ROAD DIVISIONS.

§ 2745. Road divisions, formation of.
§ 2746. Petition for formation of.
§ 2747. Affidavit accompanying petition.
§ 2748. Publication of petition and notice.
§ 2749. Hearing of petition.
§ 2750. Boundaries of.
§ 2751. Petition for improvement of roads.
§ 2752. Duty of board on receipt of petition.
§ 2753. Funds may be set apart.
§ 2754. Duty of board in regard to special tax.
§ 2755. Notices of election for special tax.
§ 2756. Elections to vote upon special tax.
§ 2757. Ballots.
§ 2758. Officers must certify results of election.
§ 2759. Supervisors to compute levy and collect tax.
§ 2760. Election for issuing road bonds.
§ 2761. Posting and publishing notices.
§ 2762. Election notice must contain what.
§ 2763. General law to govern elections.
§ 2764. Certifying results; duties of supervisors.
§ 2765. Form of bonds.
§ 2766. Interest. What bonds must contain.
§ 2767. Reversion of funds.
§ 2768. Work to be done by contract.
§ 2769. Inspectors, appointment and duties of.
§ 2770. Payments on account.
§ 2771. Moneys remaining in fund.
§ 2772. Expenses of organization.

§ 2745. Road divisions, formation of. Any portion of a county not contained in a permanent road division may be formed into a permanent road division under the provision of this act, and when so formed shall have the powers herein enumerated and such as may hereafter be conferred thereon by law. En. March 12, 1872. Rep. 1883, 5. En. Stats. 1901, 277.

§ 2746. Petition for formation of. A petition for the formation of a permanent road division (naming it) may be presented to the board of supervisors of the county wherein the division is proposed to be formed. It shall be signed by at least a majority of the landowners residing within the proposed division, and shall contain:

1. The boundaries of the proposed division;

2. The number of acres therein contained and the assessed valuation of the same accordingly to the last completed assessment roll of the county;

3. The value of the improvments on real estate and of the personal property within the proposed division according to the last completed assessment roll;

4. The number of inhabitants therein as near as can be ascertained;

5. A particular description as to location of the road or roads which it is desired to construct or improve and the necessity for such work;

6. By the last completed assessment roll is meant the last roll as made up by the assessor, with the changes ordered by the supervisors sitting as a board of equalization. En. March 12, 1872. Am'd. 1873-4, 128; 1880, 76. Rep. 1883, 5. En. Stats. 1901, 277.

Cal.Rep.Cit. 51, 416; 71, 87; 136, 549.

§ 2747. **Affidavit accompanying petition.** Such petition shall be accompanied by an affidavit stating that affiant has compared the valuations therein given with those on the last completed assessment roll and that the same are complete and correct. En. March 12, 1872. Am'd. 1873-4, 128; 1880, 76. Rep. 1883, 5. En. Stats. 1901, 277.

§ 2748. **Publication of petition and notice.** Such petition shall be presented at a regular meeting of the board of supervisors, and shall be published for at least three insertions in some weekly paper, or for the period of fifteen days in a daily paper published in said county, before the time at which the same is to be presented, together with a notice stating the time of the meeting at which the same will be presented, and naming a day when the board will be asked to consider the same, such day not being later than the fifth day of the monthly session when said petition is to be presented. En. March 12, 1872. Rep. 1883, 5. En. Stats. 1901, 278.

§ 2749. **Hearing of petition.** Upon the day named for the hearing of said petition the board shall hear the same, and may adjourn such hearing from time to time, not more than two months in all. On the final hearing they shall make such changes in the proposed boundaries as they may find to be proper, and shall define and establish such boundaries. Any changes made by the board shall not include any territory outside of the boundaries described in the petition, until the board has given at least twenty days' notice of its intention to include such territory in said district. Such notice shall be given by publication for at least two insertions in a weekly or for a period of ten days in a daily paper published in the county, and by

leaving a copy of said notice at each place of abode on said territory. En. March 12, 1872. Rep. 1883, 5. En. Stats. 1901, 278.

§ 2750. **Boundaries of.** The boundaries established by the board shall be the boundaries of such permanent road division until the same shall be changed in the manner provided by law; but if it shall appear to the board that the boundaries of any such division have been incorrectly described, it shall direct the county surveyor to ascertain and report a correct description of the boundaries in conformity with the orders of the board. At the first regular meeting of the board after the filing of the county surveyor's report, they shall cause notice to be published in some newspaper published in the county that the report will be considered at the next regular meeting of the board, naming the day, and at such meeting the board shall ratify the report of the surveyor, with such modifications as they deem necessary. And the boundaries so established shall be the legal boundaries of such permanent road division. En. March 12, 1872. Rep. 1883, 5. En. Stats. 1901, 278.

§ 2751. **Petition for improvement of roads.** At the time of forming a permanent road division, or at any time thereafter, any ten or more resident freeholders thereof, may petition the board of supervisors to have plans prepared for the construction or improvement of the road or roads or any part thereof mentioned in the petition for the formation of said division, or of the whole or any part of any other road in the division. Such petition shall state:

1. The recommendations of the petitioners as to the materials to be used and the manner of constructing or repairing said road or roads;

2. An estimate of the probable cost of such work;

3. A request that the board appropriate for said work a sum of money, naming it, from the general road fund of the county;

4. A request that the board appropriate for said work a sum of money, naming it, from the road district funds in the road districts of which said permanent road division forms a part;

5. A request that a special tax be levied or that the

bonds of the division be issued to raise the balance necessary for said work. En. March 12, 1872. Rep. 1883, 5. En. Stats. 1901, 278.

§ 2752. **Duty of board on receipt of petition.** Upon receiving such petition the board shall proceed to prepare, or cause to be prepared, plans and specifications for and an estimate of the cost of the work mentioned in said petition, and for any other road, bridge, culvert or work considered a necessary part of the permanent road petitioned for. En. March 12, 1872. Rep. 1883, 5. En. Stats. 1901, 279.

§ 2753. **Funds may be set apart.** When the board has adopted plans and specifications for said work they may set apart therefor such a sum from the general road fund of the county as they shall consider equitable; also, such sum from the funds of the district or districts of which said division is a part, as they consider equitable, but not less than seventy-five per cent of the sum which bears the same ratio to the whole fund of the district or districts which the assessed valuation of the division bears to the whole valuation of the district or districts of which it forms a part. The board may in its discretion give more than this percentage. These sums shall be set apart in a fund, to be known as the permanent road fund of ——— division (using the name of the division). En. March 12, 1872. Rep. 1883, 5. En. Stats. 1901, 279.

§ 2754. **Duty of board in regard to special tax.** If a special tax has been petitioned for, the board of supervisors shall immediately order an election within said division to determine whether the same shall be levied. And the supervisors may, in their discretion, submit to the electors of said division the question whether the balance of the estimated cost of said improvement shall be raised by special tax in one, two or three successive years, raising an equal amount each year. Such election must be called by posting notices not more than one mile apart and not less than three in all, along the road or roads proposed to be constructed or improved, at least twenty days before the election, and also by publishing the same notice in a daily or weekly paper published in the county at least once a week for three insertions. En. March 12,

1872. Am'd. 1873-4, 129; 1880, 76. Rep. 1883, 5. En. Stats. 1901, 279.

§ 2755. **Notices of election for special tax.** Such notices must specify the time and place or places of holding the election, the amount of money proposed to be raised and the purpose for which it is to be used, including a brief description of the proposed work and materials to be used, and whether it is proposed to raise the amount in one, two or three successive years. If in more than one year, the amount proposed to be raised each year. En. March 12, 1872. Am'd. 1873-4, 129; 1880, 76. Rep. 1883, 5. En. Stats. 1901, 279.

§ 2756. **Elections to vote upon special tax.** For the purposes of this election, the supervisors shall establish, by order, one or more precincts and appoint three judges for each to conduct the same, and it must be held in all respects as nearly as practicable in conformity with the general election law; but no particular form of ballot need be used, nor shall any informality in conducting such election invalidate the same if the election shall have been otherwise fairly conducted. En. March 12, 1872. Am'd. 1880, 76. Rep. 1883, 5. En. Stats. 1901, 279.

Cal.Rep.Cit. 95, 469; 99, 213; 136, 549.

§ 2757. **Ballots.** At such elections the ballots shall contain the words "Tax—Yes" or "Tax—No." En. March 12, 1872. Rep. 1880, 76. En. Stats. 1901, 280.

Cal.Rep.Cit. 102, 33.

§ 2758. **Officers must certify results of election.** The officers of the election must certify the result of the election to the board of supervisors, giving the whole number of votes cast, the number for and the number against the tax. If the majority shall be against the tax, the money theretofore transferred to the fund of such division shall revert to the funds from which it was taken. En. Stats. 1901, 280.

§ 2759. **Supervisors to compute levy and collect tax.** If the majority of the votes cast are for the tax, the supervisors must at the time of levying the county taxes levy a tax upon all the taxable property in the division sufficient to raise the amount voted for the current fiscal year. The rate of taxation shall be ascertained by de-

ducting fifteen per cent for anticipated delinquencies from the aggregate assessed value of the property in the division as it appears on the assessment roll of the county and then dividing the sum voted by the remainder of such aggregate assessment value. The tax so levied shall be computed and collected in the same manner as state and county taxes, and when collected shall be paid into the county treasury for the use of the division in which the tax is voted. En. Stats. 1901, 280.

§ 2760. **Election for issuing road bonds.** If the petition mentioned in section seven of this act ask for the issuance of bonds, the supervisors shall call an election and submit to the electors of the division whether the bonds shall be issued and sold for the purpose of paying for the proposed work or any part thereof. En. Stats. 1901, 280.

§ 2761. **Posting and publishing notices.** Such election shall be called by posting notices not more than a mile apart along the line of proposed work, and not less than three notices in all, for not less than twenty days before the election; and by publishing the same in a daily newspaper published in the county for a period of fifteen days, or in a weekly paper for three successive insertions before said election. At the time of calling the election, the supervisors shall indicate the polling-place or places and define the boundaries of the election districts, but no regular election precinct shall be part in one and part in another election district. En. Stats. 1901, 280.

§ 2762. **Election notice must contain what.** Such notice must contain:

1. The time and place or places of holding such election;
2. The name of three judges for each election district to conduct the same;
3. The hours during the day in which the polls will be open, not less than eight;
4. The amount and denomination of the bonds; the rate of interest, not exceeding seven per cent; and the number of years, not exceeding twenty, any part of said bonds shall run;
5. The purpose for which it is to be used, including a brief description of the proposed work and the materials to be used;

6. The signature of the chairman of the board, attested by the county clerk. En. Stats. 1901, 280.

§ 2763. **General law to govern elections.** Such election shall be conducted as near as practicable in accordance with the general election law, but no particular form of ballot need be used. No informality in conducting such election shall invalidate the same if the election shall have been otherwise fairly conducted. At such elections the ballots shall contain the words "Bond—Yes" or "Bond—No." En. Stats. 1901, 280.

§ 2764. **Certifying results; duties of supervisors.** The officers of the election must certify the result of the election to the board of supervisors, giving the whole number of votes cast and the number for and the number against the bonds. If two thirds of those voting thereon are in favor of issuing such bonds, then the board of supervisors shall cause an entry of that fact to be made upon the minutes, and thereupon they shall be authorized and empowered to issue the bonds of said division to the number and amount provided for in such proceedings, payable out of the funds of such division, and that the money shall be raised by taxation upon the property in said district for the redemption of said bonds and the payment of interest thereon, but the total amount of bonds so issued shall not exceed fifteen per cent of the taxable property of the division as shown by the last equalized assessment roll of the county. En. Stats. 1901, 281.

§ 2765. **Form of bonds.** The supervisors, by an order entered upon the minutes, shall prescribe the form of said bonds and of the interest coupons attached thereto, and shall fix the time when the several bonds shall become due, not exceeding twenty years from the date thereof. En. Stats. 1901, 281.

§ 2766. **Interest. What bonds must contain.** Such bonds shall bear no greater rate of interest than seven per cent per annum, and the interest shall be payable annually. The bonds and each coupon shall bear the autograph or fac-simile printed signature of the chairman of the board and of the county clerk. Said bonds shall be sold by the county treasurer, after reasonable notice, to the highest

and best bidder, but not for less than par and accrued interest, if any. En. Stats. 1901, 281.

§ 2767. Reversion of funds. If at the election mentioned in section sixteen of this act, an issue of bonds is not authorized, the money transferred to the fund of the division shall revert to the funds from which it was taken. En. Stats. 1901, 281.

§ 2768. Work to be done by contract. The road work provided for in this act shall be done by contract let to the lowest responsible bidder in accordance with the provisions of section twenty-six hundred and forty-three of the Political Code of California. The successful bidder shall give a bond in such sum as the supervisors shall provide, conditioned for the faithful performance of the contract, and for the payment of all labor employed and material used in said work, and such bondsmen shall be jointly and severally liable for the payment of all such labor employed and such material used. En. Stats. 1901, 281.

§ 2769. Inspectors, appointment and duties of. Before opening the bids for doing the work herein provided for, the supervisors shall appoint two inspectors, residents of the division, both of whom shall not belong to the same political party, and fix their compensation, not exceeding thirty cents an hour for the time actually spent in the performance of their duties, which compensation shall be paid out of the funds of the division. It shall be the duty of the inspectors to inspect from time to time the work being done under the contract. They shall file with the board of supervisors at least once a month written reports on the manner in which the contractor is performing the work, setting forth in detail any objections they or either of them may have to the manner in which the work is being done, with recommendations as to changes desirable and provided for in the plans and specifications. They shall also estimate the amount of work of an unsatisfactory nature done since their last report and the supervisors shall make no payment on account of such alleged unsatisfactory work until the objections have been inquired into or until the contractor shall have performed the work in strict compliance with the plans and specifications. En. Stats. 1901, 281.

§ 2770. Payments on account. The supervisors may, from time to time as the work progresses, make payments on account, but shall not, before the completion of the contract, pay more than seventy-five per cent of the contract price of the amount completed, and final payment shall not be made until the work has been accepted by the board. En. Stats. 1901, 281.

§ 2771. Moneys remaining in fund. Any money remaining to the credit of the division on the completion of the work contracted for shall remain in the fund of the division and be expended in the maintenance of the road thus improved. Upon the payment of the debts of the division or upon the failure of the electors to vote a special tax or bonds in said division, for any part of the proposed work, the division shall cease to exist as a division. En. Stats. 1901, 282.

§ 2772. Expenses of organization. The expenses of organizing a permanent road division and of conducting any election under the provisions of this act shall be a county charge, payable out of the general county fund. En. Stats. 1901, 282.

CHAPTER III.

TOLL ROADS.

Article I. Construction of Toll Roads, §§ 2779-2801.
II. Use of Toll Roads, and Obstructions Thereon, §§ 2814-2817.
III. Inspection and Repairs, §§ 2827-2832.

ARTICLE I.

CONSTRUCTION OF TOLL ROADS.

§ 2779. Notice of and application to construct the road.
§ 2780. Special meeting of supervisors.
§ 2781. Hearing the application.
§ 2782. Action of supervisors.
§ 2783. Commissioners, how appointed for other counties.
§ 2784. Laying out the road.
§ 2785. Compensation of commissioners, map and report.
§ 2786. Branches and extensions.
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§ 2793. How to be constructed.
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§ 2798. Erection of gates, etc.
§ 2799. Abandonment of road, and what becomes of it.
§ 2800. County may purchase road, how.
§ 2801. Appraisement and award, how made.

§ 2779. Notice of and application to construct the road. If all lands necessary for the roadbed and other purposes are not otherwise acquired as hereinafter provided, the company proposing to construct a toll road through any part of a county must publish a notice in some newspaper published therein, and if none, then the newspaper nearest thereto, once in each week for six successive weeks, specifying the character of the road, the termini, and each town, city, or village through which it is proposed to construct it, and the time when the application hereinafter required will be made. After such notice is complete, on the day specified therein, application must be made to the board of supervisors of the county for authority to take the necessary land and to construct the road described in the notice. En. March 12, 1872.

Cal.Rep.Cit. 88, 633; 95, 85.

Wagon road corporations, taking tolls: Civ. Code, secs. 514 et seq.

§ 2780. Special meeting of supervisors. On application therefor the president of the board of supervisors may call a special meeting to hear the application, ten days' notice thereof being served on each of the other supervisors, either personally or by leaving it at his place of residence if absent; the expense of such special meeting and serving notices must be paid by the applicant. En. March 12, 1872.

§ 2781. Hearing the application. On the hearing all residents of the county and others interested may appear and be heard. The board may take testimony, or authorize it to be taken by any officer of the county, and adjourn the hearing from time to time. En. March 12, 1872.

§ 2782. Action of supervisors. If it appears to the board of supervisors that the public interests will be promoted thereby, a majority of all the members thereof may grant

the application, and by order authorize the company to take the real property necessary, and appoint two commissioners to lay out the road, who are disinterested either in the company or in any land sought to be taken or adjoining thereto. A copy of this order must be recorded in the county clerk's office before action under it is had. En. March 12, 1872.

Cal.Rep.Cit. 123, 181.

§ 2783. **Commissioners, how appointed for other counties.** If the route extends into more than one county, the application must specify their names, and the board of supervisors of each of such counties must appoint commissioners to act in their respective counties with the commissioner and surveyor of the company. The company must appoint one commissioner of like qualification as those appointed by the board of supervisors, and furnish a surveyor to accompany and act with them. En. March 12, 1872.

§ 2784. **Laying out the road.** The commissioners must take the oath of office, and view and lay out the road as in their judgment will best promote the public interest. They must hear all persons interested, and may take testimony; they may determine the breadth of the way, not exceeding one hundred feet, except where the company acquire a greater breadth by grant. They must make, sign, and certify an accurate survey and description of the route, and of the land necessary for the road, buildings, and gates in each county, and record the same in the office of the county clerk thereof. When the breadth of the road is not fixed by the commissioners it may be fixed by the commissioner of highways or the board of supervisors of the county. En. March 12, 1872.

§ 2785. **Compensation of commissioners, map and report.** The company must pay to each commissioner his expenses and four dollars a day for his services; cause their surveyor to make the map of the proposed road, which, when approved and certified by the commissioners, must be filed with the report in the office of the clerk of the board of supervisors and recorded. En. March 12, 1872.

§ 2786. **Branches and extensions.** The directors of any such company may, with the written consent of the hold-

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ers of two thirds of the stock, proceed in the manner prescribed by the preceding seven sections to construct branches to their road, or to extend it or alter any part of its route or branches. En. March 12, 1872.

§ 2787. Acquiring lands by grant. Lands necessary for the purposes of the road or appurtenances may be acquired by purchase or condemnation. Lands within any highway may be granted by the board of supervisors or town or city authorities on such terms and for such sums as may be agreed upon. En. March 12, 1872.

§ 2788. Appropriation of damages for highways taken. When the road company desires the exclusive use of lands forming part of a highway, and such use is granted by the supervisors, the damages received therefor are to be paid to the road fund of the road district in which the same is situated. En. March 12, 1872.

Road company collecting tolls: Civ. Code, secs. 514 et seq.

§ 2789. Application, when unnecessary. When the company has obtained all the lands necessary in any county, by purchase or agreement, the road may be constructed without making the application to the board of supervisors hereinbefore provided for; but before proceeding to do so, an accurate survey of such part of the road must be made by a practical surveyor, signed and sworn to by the president and secretary, and recorded in the county clerk's office; and if the road extends into another county, authority to construct the road there must be first obtained. En. March 12, 1872.

Cal.Rep.Cit. 95, 85.

§ 2790. Orchards and gardens. No such road must be laid out through any orchard of four years' growth, to the injury of the fruit trees, or any garden of four years' cultivation, or any dwelling-house or building connected with a dwelling-house, or any yard or inclosure necessary thereto, without the consent of the owner. En. March 12, 1872.

§ 2791. Bridging streams. The road company may bridge any stream or river on the route of their road, when not within the limits prescribed by law for the erection and

maintenance of any other bridge; and in bridging streams used for rafting lumber the bridge must be so constructed as not to prevent or endanger the passage of any raft forty feet in width. En. March 12, 1872.

§ 2792. One road corporation using the roadbed of another. No plank-road company must construct its road on the road of another company, except in case of crossings, without consent of the latter. En. March 12, 1872.

§ 2793. How to be constructed. Every such road must be laid out at least fifty feet wide. The track of plank roads must be constructed eighteen feet wide, of timber, plank, or other hard material. The track of turnpikes must be bedded with stone, gravel, or such other hard material found on the line thereof, to the width of eighteen feet, and faced with broken stone or gravel. The common wagon road must be graded at least twelve feet in width, and so constructed with necessary turnouts as to permit vehicles to pass each other conveniently. All the roads must be ditched on the sides when practicable, and have proper and necessary sewerage, and be so constructed that vehicles may pass on and off the track at all intersections of roads. En. March 12, 1872.

§ 2794. May relay with what. Every company that has once laid their road with plank may relay it or any part of it with broken stone, gravel, shells, or other hard material whereby they keep a good, substantial road. En. March 12, 1872.

§ 2795. Mile-stones and posts. A mile-stone or post must be maintained at every mile, with an inscription showing the distance from the commencement of the road. If the road commences at the end of any other road, or intersects therewith, having mile-stones or posts on which the distance from any city or town is marked, a continuation of that distance must also be inscribed. En. March 12, 1872.

Injuries to mile-stones, etc.: Pen. Code, sec. 590.

§ 2796. Guide-posts. A guide-post must be erected at every place where the road is intersected by a public road, with an inscription showing the name of the place to which such intersecting road leads, in the direction to

which the name on the guide-post points. En. March 12, 1872.

Injuries to guide-posts, etc.: Pen. Code, sec. 590.

§ 2797. **Inspection, certificate, and completion.** When the road, or three consecutive miles thereof, is completed, the commissioner of highways or such road overseer or other person thereto specially appointed by the board of supervisors of the county, must inspect the road when requested, and if satisfied that the road conforms to the requirements of the law, must certify to the facts and file the certificate in the office of the county clerk; for such service four dollars per day must be by the company paid to the inspector or commissioner. When only three miles of any plank road are completed, if it is not the entire road, tolls must not be collected thereon for more than one year, unless the road or five consecutive miles are completed within the year. En. March 12, 1872.

§ 2798. **Erection of gates, etc.** When the certificate of completion is filed, toll-gates may be erected and tolls collected. No toll-gate, toll-house, or other building must be put up within ten rods of the front of any dwelling-house, barn, or outhouse, without written consent of the owner thereof. En. March 12, 1872.

§ 2799. **Abandonment of road, and what becomes of it.** Whenever the holders of two thirds of the stock consent, the directors of any company may abandon the whole or any part of their road at either or both ends, by written surrender thereof, attested by their seal, and acknowledged by the president and secretary as a deed or grant is acknowledged, and recorded in the clerk's office of each county where the surrendered road lies; thereafter the surrendered road belongs to the road districts in which it lies, but the company may continue to take toll on any three consecutive miles in length not so surrendered. En. March 12, 1872.

Cal.Rep.Cit. 99, 213; 122, 338.

Road so abandoned becomes a highway: Ante, sec. 2619.

§ 2800. **County may purchase road, how.** At any time within five years from filing the certificate of completion of any road constructed under the provisions of this chap-

ter, or at any time after any toll road constructed and under operation under any of the laws of this state has been in existence for ten or more years, a county within which the road or any portion thereof is located, may purchase the same at a fair cash valuation, to be fixed by seven commissioners, all disinterested persons; three to be appointed by the board of supervisors of the county, three by the owners of the road, and one by the judge of the superior court of the county, who must estimate the fair cash value of the road, and make report thereof, under oath, to the board of supervisors. If, within three months after filing the report, the appraised value thereof is tendered on behalf of the county to the owner of the road, or his authorized managing agent, in gold coin, the right of the owner to take tolls on the road is terminated, and the road to become the property of the county. En. March 12, 1872. Am'd. 1880, 22; 1895, 196.

Cal.Rep.Cit. 80, 341; 99, 213; 122, 888.

§ 2801. Appraisement and award, how made. A majority of the board of commissioners mentioned in the preceding section constitute a quorum, and the concurrence of a majority in making the estimate and award is binding upon the road owner if approved by the board of supervisors. The commissioners must make their report within thirty days after their appointment, and if approved, the tender of the amount of the appraisement and award must be made by the county treasurer; whether the owner conveys the road to the county or not, the report and tender operate as a conveyance to the county of the road and all its incidents and appurtenances. En. March 12, 1872.

ARTICLE II.

USE OF TOLL ROADS, AND OBSTRUCTIONS THEREON.

§ 2814. Persons exempt from tolls.
§ 2815. Encroachments, how removed.
§ 2816. Who liable for penalty, and what.
§ 2817. Action for penalty or trespass.

§ 2814. Persons exempt from tolls. The following persons, and none other, are exempt from payment of toll on wagon, turnpike, or plank roads:

1. Persons going to or from any funeral, and all funeral processions.

2. Troops in actual service of the state or of the United States, and persons going to or from a military training which by law they are required to attend.

3. Persons going to or from the courthouse in obedience to a subpœna in a criminal action.

4. Persons living within one mile of any gate by the most usually traveled road may pass it at one half toll, when not engaged in the transportation of other or the property of others.

5. Farmers living on their farms within one mile of any gate by the most usually traveled road, may pass free when going to or from their work on such farms.

6. School children attending school within three miles of their parents' or boarding house.

7. The road overseer of the road district through which road passes, or the commissioners of highways for the purpose of inspecting the condition of the road. En. March 12, 1872. Am'd. 1880, 4.

Person not exempt evading payment of tolls, fine against: Pen. Code, sec. 389.

§ 2815. Encroachments, how removed. On application by an officer of the company, the commissioner of highways, or road overseer of the district where the same exists, may inquire into any encroachment upon the lands of the company used for the purposes of the road, caused by fence, building, or otherwise, and he must, if he finds it does exist, require or cause its removal as provided for highway encroachments in article VIII, chapter II, of this title. En. March 12, 1872.

Cal.Rep.Cit. 99, 213.

Obstructions and injuries to highways: Ante, secs. 2731-2744.

Penalty for failure to remove encroachment: Post, sec. 2816.

§ 2816. Who liable for penalty, and what. Every person who, having the control thereof, neglects to remove an encroachment after being notified thereof, or permits the same to remain after notice, unless he immediately commences and diligently prosecutes its removal to completion, is liable to a penalty of five dollars for every day of such neglect or failure. En. March 12, 1872.

§ 2817. Action for penalty or trespass. An action for the penalties given by this chapter, and for any trespass on or injury to such road, may be maintained in the county where the act was done, or in that where the defendant resides, by the company. En. March 12, 1872.

Injuries to toll-houses or turnpike gates constitute misdemeanor: Pen. Code, sec. 589.

ARTICLE III.

INSPECTION AND REPAIRS.

§ 2827. Inspection of roads, and repairs.
§ 2828. Closing gates, and penalty.
§ 2829. Defects in road, to be reported to whom.
§ 2830. Enforcing obedience to notice and requirement.
§ 2831. Fees of commissioner or overseer.
§ 2832. Pack trails in mountain districts.

§ 2827. Inspection of roads, and repairs. Every commissioner of highways, or road overseer of the district, to whom complaint in writing is made that any part of a wagon, turnpike, or plank toll road in his county or district, or any part of such road, the gate nearest to which is in his county or district, is out of repair, must examine it without delay and give notice of the defect, particularly describing the same, to the person attending the gate nearest thereto; if the necessary repair is not made, or defect remedied, within three days after such notice is given, the commissioner or road overseer may order such gate to be thrown open. En. March 12, 1872.

Cal.Rep.Cit. 99, 213.

§ 2828. Closing gates, and penalty. A gate so ordered to be thrown open must not be shut nor any toll collected thereat until the commissioner of highways or road overseer ordering it shut grants a certificate that the road is in sufficient repair, and that the gate ought to be closed. The company and their gatekeeper or other employee, violating or permitting the violation of this section, or the order made under the preceding section, are each liable in a penalty of twenty-five dollars for each offense, to be recovered by the party aggrieved. En. March 12, 1872.

§ 2829. Defects in road, to be reported to whom. Every commissioner of highways or road overseer who discovers a defect in any toll road in his county or district, or a gate placed in a situation contrary to law, must give written

notice thereof to one or more of the directors or managing agents of the company, requiring the defective road to be repaired, or the gate to be removed, within a specified time; and may order that in the mean time such gates as he specifies be thrown open. En. March 12, 1872.

§ 2830. **Enforcing obedience to notice and requirement.** If the notice and requirements are not obeyed, the commissioner of highways or road overseer must make immediate complaint to the district attorney of the county, who must prosecute the company therefor in the name of the people for so suffering the road to be out of repair, or of having placed any gate in a situation contrary to the law; and if convicted thereof, the company must be fined not exceeding two hundred and fifty dollars. En. March 12, 1872.

§ 2831. **Fees of commissioner or overseer.** The commissioner of highways or road overseer complaining to the district-attorney, or who makes inspection and discovers defects in the road, is entitled to three dollars for each day's services in inspecting the road, or necessarily expended in prosecuting the action therefor, to be paid in case of conviction as costs. When no action is had, but repairs are made, or gate removed, on the inspection and requirement of the commissioner of highways or road overseer, the toll gatherer nearest the road so out of repair, or the gate to be moved, must pay the fees hereinbefore specified out of the tolls collected; if he refuse to pay the same, the same may be recovered by action, with costs. En. March 12, 1872.

§ 2832. **Pack trails in mountain districts.** The boards of supervisors of the several counties of this state are hereby authorized to permit the toll-road companies heretofore or which may hereafter be organized under the provisions of this code, for the purpose of constructing toll roads within the mountain districts of this state, to first construct on the line of their proposed toll road a pack trail for the accommodation of pack trains and horsemen and to collect tolls thereon. The board of supervisors shall fix the amount of license to be paid and tolls to be collected on such pack trail, and that no such permit or franchise shall be granted for a longer period than two years. En. Stats. 1873-4, 131.

CHAPTER IV.

PUBLIC FERRIES AND TOLL BRIDGES.

Article I. General Provisions, §§ 2843-2858.
II. Toll Bridges, §§ 2870-2881.
III. Toll Ferries, §§ 2892-2895.

ARTICLE I.

GENERAL PROVISIONS.

§ 2843. What board to grant authority to construct.
§ 2844. Notice must be proved.
§ 2845. Duty of board of supervisors granting authority.
§ 2846. License tax and rate of tolls, how fixed.
§ 2847. Report of bridge or ferry owner or keeper.
§ 2848. Inquiry of the board of supervisors fixing tolls.
§ 2849. When to direct license to issue.
§ 2850. Bond, conditions and execution.
§ 2851. When bridge unites two counties.
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§ 2853. Toll bridge or ferry within one mile of another, when.
§ 2854. Owner of land preferred to build bridge or ferry.
§ 2855. How lands are acquired for use of bridge or ferry.
§ 2856. Must post rates of toll.
§ 2857. Revenue derived from license, how disposed of.
§ 2858. To keep banks in repair.

§ 2843. What board to grant authority to construct. When authority to construct a toll bridge, or to erect and keep a ferry over waters dividing two counties is desired, application must be made to the board of supervisors of that county situated on the left bank descending such bay, river, creek, slough, or arm of the sea. En. March 12, 1872.

Cal.Rep.Cit. 132, 169; 134, 622; 136, 49.

Maintaining toll bridge or ferry without authority is misdemeanor: Pen. Code, sec. 386.

Power of supervisors to license ferries: See post, sec. 4046, subd. 17.

§ 2844. Notice must be proved. The board of supervisors must not grant authority to construct or erect a toll bridge or ferry until the notice of such intended application has been given as respectively required in articles II and III of this chapter. En. March 12, 1872.

§ 2845. Duty of board of supervisors granting authority. The board of supervisors granting authority to construct a toll-bridge or to keep a public ferry, must at the same time:

1. Fix the amount of a penal bond to be given by the person or corporation owning or taking tolls on the bridge or ferry for the benefit of the county, and all persons crossing or desiring to cross the same, and provide for the annual renewal thereof.

2. Fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than three nor over one hundred dollars per month, payable annually.

3. Fix the rate of tolls which may be collected for crossing the bridge or ferry, which must not raise annually an income exceeding fifteen per cent on the actual cost of the construction or erection and maintenance of the bridge or ferry for the first year, nor on the fair cash value, together with the repairs and maintenance thereof for any succeeding year.

4. Make all necessary orders relative to the construction, erection, and business of licensed toll-bridges or ferries which they have by law the power to make. The board of supervisors may, at any time they see fit, authorize and maintain fords across any water within any distance of any licensed toll-bridge or ferry. En. March 12, 1872.

§ 2846. License tax and rate of tolls, how fixed. The license tax and rate of toll fixed as provided in the preceding section must not be increased or diminished during the term of twenty years, at any time, unless it is shown to the satisfaction of the board of supervisors that the receipts from tolls in any one year is disproportionate to the cost of construction or erection, or the fair cash value thereof, together with the cost of all necessary repairs and maintenance of the bridge or ferry. The license tax fixed by the board of supervisors must not exceed ten per cent of the tolls annually collected. En. March 12, 1872.

§ 2847. Report of bridge or ferry owner or keeper. Every owner or keeper of a toll bridge or ferry must report annually to the board of supervisors from which his license is obtained, under oath, the following facts:

1. The actual cost of the construction or erection, and equipment of the toll bridge or ferry.

2. The repairs made during the preceding year, and the actual cost thereof.

3. The expense of labor and hire of agents, and other costs necessarily incurred in and about the conduct of their business.

4. The amount of tolls collected; and

5. The estimated actual cash value of the bridge or ferry, exclusive of the franchise. En. March 12, 1872.

§ 2848. Inquiry of the board of supervisors fixing tolls. Whenever the board of supervisors are about to fix the license tax and rate of tolls on a bridge or ferry they must make inquiry into the present actual cash value and the cost of all necessary repairs and maintenance thereof, and for that purpose may examine, under oath, the owner or keeper of the same, and other witnesses, and the assessed value of the bridge or ferry on the assessment roll of the county. When the estimate of the board is made, if the same is not agreed to by the owner or keeper of the bridge or ferry, the same must be fixed by three commissioners, one to be appointed by the board of supervisors, one by the owner and keeper, and the third by the county judge, who must hear testimony and fix such value and cost according to the facts, and report the same to the board of supervisors under oath. In all estimates of the fair cash value of the bridge or ferry the value of the franchise must not be taken into consideration. En. March 12, 1872.

§ 2849. When to direct license to issue. When the cost of construction or erection and equipment of the bridge or ferry, or the fair cash value thereof, together with the cost of needed repairs and the conduct and maintenance of the same, is ascertained and fixed for the preceding year, the board must, on such ascertained amount, fix the annual license tax rate of tolls, and the amount of the penal bond, and direct a license to be issued by the clerk. En. March 12, 1872.

Licenses generally: See post, secs. 3356 et seq.

§ 2850. Bond, conditions and execution. The bond required of the owner or keeper of the toll bridge or ferry must be in the sum fixed by the board of supervisors, with one or more sureties, and conditioned that the toll bridge or ferry will be kept in good repair and condition, and that the keeper will faithfully comply with the laws of the state and all legal orders of the board of supervisors regulating

the same, and pay all damages recovered against him by any person injured or damaged by reason of delay at or defect in such bridge or ferry, or in any manner resulting from a non-compliance with the laws or lawful orders regulating the same. The bond must be approved by the president and filed with the clerk of the board of supervisors. En. March 12, 1872.

Violating conditions of undertaking to keep ferry, is misdemeanor: Pen. Code, sec. 387.

§ 2851. When bridge unites two counties. The license tax for a ferry or bridge connecting two counties must be paid to the treasurer of the county granting it, and the license issued by the auditor thereof; but the treasurer of such county must pay to the treasury of the county in which the other end or landing of the bridge or ferry is located one half the sum so received annually, or the auditor may issue the license on filing with him receipts for their respective halves of the tax taken from the treasurer of each of the two counties. En. March 12, 1872.

Delinquent bridge or ferry license tax, proceedings to collect instituted after thirty days: See Stats. 1872, p. 539.

§ 2852. Supervisors shall not act if interested. When a supervisor is interested in an application to erect, construct, or take tolls, or alter tolls on a bridge or ferry, he shall not act in any of such matters. En. March 12, 1872. Am'd. 1880, 23.

§ 2853. Toll bridge or ferry within one mile of another, when. No toll bridge or ferry must be established within one mile immediately above or below a regularly established ferry or toll bridge, unless the situation of a town or village, the crossing of a public highway, or the intersection of some creek or ravine renders it necessary for public convenience. In addition to the public notice hereinafter required, notice of intention to apply for authority to erect a toll bridge or ferry, as in this section provided, must be served upon the proprietor of the ferry or toll bridge already established at least ten days prior thereto, giving the time and place and grounds of such application. En. March 12, 1872.

Cal.Rep.Cit. 114, 496; 134, 58.

§ 2854. Owner of land preferred to build bridge or ferry. The owner of land on either side of the waters to be crossed, and the owner of the land on the left bank descending over the owner of land on the right bank, is entitled to preference in procuring authority to construct a bridge or ferry; but where such owner fails or neglects to apply for such authority within a reasonable time after the necessity therefor arises, the board of supervisors may grant such authority to another. En. March 12, 1872.

§ 2855. How lands are acquired for use of bridge or ferry. When there are lands necessary for the construction, erection, or use of such bridge or ferry which cannot be procured by agreement between the owner or corporation and the land owner, the right of way and all other lands necessary for the use and construction or erection thereof may be acquired by condemnation. En. March 12, 1872.

Condemnation, eminent domain: Ante, sec. 44.

§ 2856. Must post rates of toll. Every licensed toll bridge or ferry must have the rates of toll as fixed by the board of supervisors, printed or written, posted up in some conspicuous place on or near the bridge or ferry. En. March 12, 1872.

§ 2857. Revenue derived from license, how disposed of. The proceeds of the license tax on ferries and toll bridges must be paid into the county treasury for the use of roads and highways, or may be used by the board of supervisors at any time in the purchase of toll roads and toll bridges. En. March 12, 1872.

§ 2858. To keep banks in repair. All ferry and toll bridge keepers must keep the banks of the streams or waters at the landings of their ferries or bridges graded and in good order for the passage of vehicles. For every day compliance herewith is neglected twenty-five dollars is forfeited, to be collected for the use of the road fund of the county. En. March 12, 1872.

ARTICLE II.

TOLL-BRIDGES.

§ 2870. Application for leave to construct.
§ 2871. Hearing application.
§ 2872. Action of the board of supervisors.
§ 2873. What the board of supervisors may require.
§ 2874. Use of highways.
§ 2875. How constructed over navigable waters.
§ 2876. Supervisors may regulate.
§ 2877. Channel of streams navigable by rafts to be kept clear.
§ 2878. Completion of bridge, rate of toll, and license tax.
§ 2879. Persons exempt.
§ 2880. Penalty for avoiding tolls.
§ 2881. County may purchase toll bridge.

§ 2870. Application for leave to construct. Every applicant for authority to construct a toll bridge must publish a notice in at least one newspaper in each county in which the bridge or any part of it is to be, or if no paper is published therein, in an adjoining county, once in each week for six successive weeks, specifying the location, the length, and breadth of the bridge, and the time at which the application hereinafter required will be made. After notice is given, application must be made to the board of supervisors of the proper county, at any meeting specified in the notice, for authority to construct it. En. March 12, 1872.

§ 2871. Hearing application. On the hearing, any person may appear and be heard. The board may take testimony or authorize it to be taken by any judicial officer of the county; and it may adjourn the hearing from time to time. A copy of the articles of incorporation, certified by the secretary of state, or by the clerk where they are filed, must be attached to and filed with the application if made by a corporation. En. March 12, 1872.

Articles of incorporation: Civ. Code, secs. 289, 290 et seq.

§ 2872. Action of the board of supervisors. If the board are of opinion that the public interests will be promoted thereby, it may, by the assent of a majority of all the members of the board, grant the application by an order entered in its minutes, and particularly describing the bridge. The applicant must cause a certified copy of the order, with a copy of the application, to be recorded in

the office of the clerk of the county before proceeding under it; provided, that the board of supervisors shall not have power to license bridges across the Sacramento or San Joaquin rivers, the Suisun Bay, or Carquinez Straits, the Petaluma, Napa, or Sonoma creeks, except at points above the head of navigation on said streams. En. March 12, 1872. Am'd. 1877-8, 52.

Cal.Rep.Cit. 123, 180.

§ 2873. **What the board of supervisors may require.** The board of supervisors may, at the time of granting authority to construct a toll bridge, by order, require the bridge to be constructed within a certain time, to be of a certain width, character, or description, and to be constructed of certain materials, which order must be complied with by the owner or corporation constructing the same before license to take tolls is issued. En. March 12, 1872.

§ 2874. **Use of highways.** The corporation or bridge owner may use, in such manner as prescribed by the board, so much of any public road on either side of the stream or waters as may be necessary for constructing and maintaining the bridge and toll houses. En. March 12, 1872.

Cal.Rep.Cit. 123, 181.

§ 2875. **How constructed over navigable waters.** All bridges constructed under this chapter crossing navigable streams must be so constructed as not to obstruct navigation, and must have a draw or swing of sufficient space or span to permit the safe, convenient, and expeditious passage at all times of any steamer, vessel, or raft which may navigate the stream or water bridged. En. March 12, 1872.

Cal.Rep.Cit. 79, 348.

§ 2876. **Supervisors may regulate.** The board of supervisors may, by order, regulate and govern the amount of weight and number of animals that may be driven on to a toll bridge at any one time, and prescribe rules for the government of the draws or swings and attendance of the same, and prescribe penalties for disobedience of such rules. En. March 12, 1872.

§ 2877. **Channel of streams navigable by rafts to be kept clear.** Any one bridging a stream navigated or navigable

must at all times keep the channel above and below the bridge clear from all deposits occasioned by its erection and prejudicial to such navigation, and is liable to pay to all persons unreasonably hindered or delayed in passing such bridge with rafts or vessels all damages sustained thereby. En. March 12, 1872.

§ 2878. Completion of bridge, rate of toll, and license tax. Every bridge erected under these provisions must have good and substantial railings or sidings, at least four and a half feet high. When a bridge is completed, and a certificate that it is so, and is safe and convenient for the public use, is signed by the commissioner of highways, or president of the board of supervisors, and filed in the county clerk's office in the county or counties in which it is located, the directors or owner may erect a toll gate at such bridge and require such tolls as the boards of supervisors of the county or counties from time to time prescribe. A license therefor must be issued by the auditor of the county on giving the necessary bond and paying the license tax fixed therefor. En. March 12, 1872.

§ 2879. Persons exempt. Any person going to or from a funeral, school, performing highway labor, or attending a military parade, or court which by law he is required to attend as a witness in a criminal case, is exempt from the payment of tolls. En. March 12, 1872.

Person not exempt, evading toll, fine against: Pen. Code, sec. 389.

§ 2880. Penalty for avoiding tolls. Any person liable to pay toll forcibly or fraudulently passing the gate of a toll bridge without paying the toll is liable to a penalty of ten dollars in addition to the damages caused, to be recovered by the owner. En. March 12, 1872.

Passing gate of toll bridge and evading payment, fine for: Pen. Code, sec. 389.

§ 2881. County may purchase toll bridge. Within the same time, in like manner, and to the same effect as toll roads are purchased under the provisions of sections 2802 and 2803, the county or counties, jointly acting, in which the same is situated, may purchase a toll bridge constructed under the provisions of this chapter. En. March 12, 1872.

ARTICLE III.

TOLL FERRIES.

§ 2892. Application for leave to erect; notice.
§ 2893. Duty of the board of supervisors.
§ 2894. Powers of the board of supervisors.
§ 2895. Penalties, how disposed of.

§ 2892. Application for leave to erect; notice. Every applicant for authority to erect and take tolls on a public ferry must publish a notice in at least one newspaper in each county in which the ferry is or touches, or if there is no newspaper published therein, then in one published in an adjoining county, and by posting three notices in three public places in the township for four successive weeks, specifying the location and the time and place when and where the application will be made. After notice is given application must be made in writing, under oath, to the board of supervisors of the proper county, the landings of the proposed ferry must be described, and the names of the owners thereof given, if known; and if the applicant is not the owner of the land, that notice of the application has been served on the owner thereof at least ten days prior to the application. En. March 12, 1872.

§ 2893. Duty of the board of supervisors. At the hearing, proof of giving the notice, as required by the preceding section, must be made, and any person may appear and contest the application. If the board finds that the ferry is either a public necessity or convenience, and that the applicant is a suitable person, and by reason of ownership of the landing or failure of the owner thereof to apply is entitled thereto, authority to erect and take tolls on the ferry may be granted to him for the term of twenty years. En. March 12, 1872.

Cal.Rep.Cit. 134, 625.

§ 2894. Powers of the board of supervisors. The board of supervisors may make all needful rules and regulations for the government of ferries and ferry keepers, prescribing:

1. How many boats must be kept, their character, and how propelled;

2. The number of hands, boatmen, or ferrymen to be employed, and rules for their government;

3. How many trips to be made daily;

4. When and under what circumstances to make trips in the night-time;

5. Who may be ferried free of toll;

6. In what cases of danger or peril not to cross;

7. Penalties for violation of regulations;

8. In case of steamboats, the rate of speed;

9. The method of and preference in loading and crossing; and

10. How and by whom action must be brought to recover penalties. En. March 12, 1872.

§ 2895. Penalties, how disposed of. Penalties recovered under this article must be paid to the county treasurer for the use of the general road fund of the county. En. March 12, 1872.

CHAPTER V.

WHARVES, CHUTES, AND PIERS.

§ 2906. Board of supervisors to authorize construction.
§ 2907. Application, what to contain and how made.
§ 2908. Petition relative to lands not owned by applicant.
§ 2909. Notice served on non-residents.
§ 2910. Board to hear proof, and may grant authority.
§ 2911. Overflowed or tide lands granted.
§ 2912. One hundred and fifty feet on each side of wharf, etc.
§ 2913. How to obtain use of lands.
§ 2914. Dimensions of wharves, etc.
§ 2915. Franchise, what constitutes.
§ 2916. Board of supervisors to fix rate of tolls, etc.
§ 2917. License, and the tax for.
§ 2918. To keep in good repair.
§ 2919. Restrictions on granting authority.
§ 2920. Cities and towns exempted and authorized.
§ 2921. Granting railroad right to construct.

§ 2906. Board of supervisors to authorize construction. The boards of supervisors of every county in this state may grant authority to any person or corporation to construct a wharf, chute, or pier, on any lands bordering on any navigable bay, lake, inlet, creek, slough, or arm of the sea, situate in or bounding their counties respectively, with a license to take tolls for the use of the same for the term of twenty years. En. March 12, 1872.

§ 2907. Application, what to contain and how made. Application therefor must be made by publishing notice as required in section 2892, and filing a petition in writing, containing:

1. The name and residence of the applicant; and if a corporation a certified copy of the articles of incorporation;

2. A map of the waters, and the name and location thereof, and of the adjoining lands;

3. A plan of the wharf, chute, or pier proposed to be constructed, and of the land within three hundred feet thereof;

4. The names of the owners of the lands, and the quantity thereof sought to be used, and whether the right to use the same is or is to be acquired by the applicant;

5. The distance it is proposed to extend the wharf, chute, or pier into the waters;

6. The estimated cost of the construction of the wharf, chute, or pier; and,

7. The time when the application will be made. En. March 12, 1872.

§ 2908. Petition relative to lands not owned by applicant. When any lands are sought to be appropriated and used for a wharf, chute, or pier, of which the applicant is not the owner, or the right of way and use thereof has not been obtained by agreement, these facts and the particular description of such land must be set forth in the petition of the applicant, and a copy of the notice of application must be served on the owner thereof by the sheriff of the county, whose official return is conclusive evidence of service, at least ten days prior to the appointed day set for the hearing of the same. En. March 12, 1872.

§ 2909. Notice served on non-residents. When the owner of the land is a non-resident of the county, it is service of notice for the sheriff to leave a copy with the occupant or agent of the owner; if none, then to place a copy in the post-office addressed to the owner, thirty days prior to the day set for the hearing. If the owner is a minor, insane, idiot, or decedent, notice must be served on the guardian, administrator, or other legal representative of such person. En. March 12, 1872.

§ 2910. Board to hear proof, and may grant authority. On the day named in the notice, or to which the hearing is adjourned, the board of supervisors must hear proof of publication and service of notice; if satisfactory, the

board must hear the allegations of the petition and any objections to the granting of the application and proofs in support of each. If from the proofs it appear that the public good or convenience will be promoted thereby, the board of supervisors may grant to the applicant the right to erect or construct a wharf, chute, or pier, as prayed for, and to take tolls for the use of the same for the term of twenty years. En. March 12, 1872.

§ 2911. **Overflowed or tide lands granted.** The grant of authority made by the board of supervisors, as provided in the preceding section, conveys to the grantee or applicant the right of way and all necessary use for the purposes of the wharf, chute, or pier, of any of the overflowed, submerged, or tide lands belonging to the state, particularly describing the quantity thereof in the order, as also the right of way over any swamp, overflowed, marsh, or tide lands lying between the wharf, chute, or pier and high or dry land, fifty feet in width, for twenty years. En. March 12, 1872.

Overflowed or tide lands of state: Post, secs. 3440 et seq.

§ 2912. **One hundred and fifty feet on each side of wharf, etc.** The grant of authority herein provided for carries with it the right to have unincumbered and unobstructed the land and water on each side of the wharf, chute, or pier, from high water mark to navigable water, a distance of one hundred and fifty feet, for the convenience of landing, loading, and unloading vessels, but for no other purpose. En. March 12, 1872.

§ 2913. **How to obtain use of lands.** Authority to construct a wharf, chute, or pier, being granted, the grantee or applicant may procure from the owner the right of way and other necessary incidental use for the wharf, chute, or pier, of any of his lands, by proceedings had under title VII, part III, of the Code of Civil Procedure. Until such use of the lands held adversely is obtained by agreement, or by the proceedings hereinbefore mentioned, there is no authority to construct a wharf, chute, or pier, or to take tolls thereon. En. March 12, 1872.

Cal.Rep.Cit. 57, 204.

Eminent domain: Ante, sec. 44. See Code Civ. Proc., sec. 1237.

§ 2914. Dimensions of wharves, etc. The wharf, chute, or pier must not be of a greater width than seventy-five (75) feet, and may extend to navigable water; provided, that a wharf constructed upon any of the navigable rivers, straits, sloughs, and inlets in this state may extend along the shores for a distance not exceeding one thousand feet, but in no case shall any wharf, chute, or pier extend into the water so far as to obstruct the free navigation of the water on which the same is situated; provided, this act shall not apply to the water-fronts of incorporated cities and towns. En. March 12, 1872. Am'd. 1880, 66.

§ 2915. Franchise, what constitutes. The orders granting authority, and agreements, contracts, deeds, and decrees of courts granting the right of way and other use of lands, must be filed and recorded in the office of the recorder of the county where the wharf, chute, or pier is situate, and constitutes the franchise of the applicant. The fees of the recorder, as also the fees of the clerk, sheriff, and other officers, for services rendered, must be paid by the applicant. En. March 12, 1872.

§ 2916. Board of supervisors to fix rate of tolls, etc. The board of supervisors must fix the rate of tolls or wharfage for the use of the wharf, chute, or pier, annually, which must not produce an income of less than fifteen per cent per annum, nor more than twenty-five per cent per annum on the fair cash value of the wharf, chute, or pier, and on the cost of repair and maintenance thereof, exclusive of the amount paid for license imposed by the next section; such value and cost of repair and maintenance to be fixed by the board of supervisors when levying the rates of tolls or wharfage, by hearing evidence and examining the assessment rolls of the county. When fixed, the rates must be furnished the owner, and a printed or written copy thereof conspicuously posted on the wharf, chute, or pier. En. March 12, 1872. Am'd. 1875-6, 52.

§ 2917. License, and the tax for. When the wharf, chute, or pier is completed, and the tolls or wharfage fixed, the owner is entitled to a license to take the tolls thereon for the term of one year, to be issued by the county auditor on the payment of such license tax as the board of supervisors may fix, which, except that for the first year, must not be

more than ten per cent of the gross receipts for tolls or wharfage for the previous year, to be paid to the county treasury for general road purposes. En. March 12, 1872.

§ 2918. To keep in good repair. Any owner or keeper of a wharf, chute, or pier, who takes toll or wharfage for the use of the same when not in good repair, or is unsafe or dangerous, forfeits the sum of twenty-five dollars, to be recovered by order of the board of supervisors granting authority to construct it, for the use of the general road fund of the county, and is liable for all damages occasioned thereby. En. March 12, 1872.

§ 2919. Restrictions on granting authority. No authority must be granted under this chapter to interfere with vested rights, nor to interfere with or infringe grants heretofore made by state authority; nor does authority to construct a wharf, chute, or pier, continue for a longer period than two years, unless the same is within that time completed. En. March 12, 1872.

Cal.Rep.Cit. 67, 545.

§ 2920. Cities and towns exempted and authorized. The lands of the state situate in the city and county of San Francisco, and those otherwise disposed of or situate within the limits of any incorporated town or city of this state, are excluded from the provisions of this chapter. The municipal authorities of any incorporated city or town other than San Francisco may grant authority to construct wharves, chutes, and piers, as is herein provided, for the board of supervisors. En. March 12, 1872.

Cal.Rep.Cit. 60, 347.

§ 2921. Granting railroad right to construct. Boards of supervisors of counties in this state may grant to any railroad corporation authority to construct a wharf, or pier on or in front of any lands owned by it bordering on any navigable bay, inlet, lake, creek, slough or arm of the sea situate in or bounding their counties, respectively, with a license to take tolls for the use of the same for the term of the corporate existence of the said railroad corporations, not exceeding fifty years whenever such board finds the use of said wharf or pier necessary to the exercise of the franchise of such railroad corporation for terminal purposes, and the same may be granted without offering the same

for sale. Nothing contained in this chapter shall be construed to limit the powers of such boards to grant the right to such railroad corporations to build and construct for terminal purposes on and in front of any lands owned by it any wharf or pier of the width necessary for the carrying on of the business of such railroad at such terminal, not to exceed one thousand (1,000) feet, and to the length that it may be desirable to construct the same, so that it may not prevent the navigation by boats and vessels of such navigable bay, inlet, lake, creek, slough or arm of the sea; provided, that there shall be excluded from the operation of this section any and all territory and property under the jurisdiction or control of any incorporated city or town or any board of state harbor commissioners. All of the provisions of this chapter not in conflict with anything in this section contained are hereby made applicable to all proceedings had under this section. En. Stats. 1899, 234.

CHAPTER VI.

MISCELLANEOUS PROVISIONS RELATING TO PUBLIC WAYS.

§ 2931. Laws of the highway.
§ 2932. Driver addicted to intoxication.
§ 2933. Notice to employer of driver's intoxication.
§ 2934. Horses to be fastened while standing.
§ 2935. Penalties, how and by whom recovered.
§ 2936. Liability of owners for damages done by drivers.
§ 2937. Exceptions to preceding sections.
§ 2938. Protection of bridges.

§ 2931. Laws of the highway. When vehicles meet, the drivers of each must turn seasonably to the right of the center of the highway, so as to pass without interference, under a penalty of twenty-five dollars for every neglect, to be recovered by the party injured. Where the whole breadth of a roadway is not worked, the center of the worked part is to be deemed the center of the highway. In time of snow, where there is a beaten track, the center of that is to be deemed the center of the highway. But this section does not apply to vehicles meeting cars running on rails or grooved tracks. En. March 12, 1872.

Cal.Rep.Cit. 134, 164.

§ 2932. Driver addicted to intoxication. No person must employ to drive any vehicle for the conveyance of pas-

sengers upon any public highway, a person addicted to drunkenness, under penalty of five dollars for every day such person is in his employment. En. March 12, 1872.

Intoxication of railway driver, conductor, etc., or telegraph operator, is misdemeanor: Pen. Code, sec. 391.

§ 2933. Notice to employer of driver's intoxication. If any driver, whilst actually employed in driving any such vehicle, is intoxicated to such a degree as to endanger the safety of his passengers, the owner, on receiving from any such passenger a written notice of the fact, verified by his oath, must forthwith discharge such driver; and if he has such driver in his service within six months after such notice, he incurs a like penalty. En. March 12, 1872.

Intoxication of certain employees: See Pen. Code, sec. 391.

§ 2934. Horses to be fastened while standing. The driver of any vehicle used to convey passengers must not leave the horses attached thereto while passengers remain in the same, without first securely fastening the horses or placing the lines in the hands of some other person, so as to prevent their running, under a penalty of twenty dollars for each offense. En. March 12, 1872.

§ 2935. Penalties, how and by whom recovered. The penalties provided by the three preceding sections are to be recovered by the district attorney of the county in which the offender resides, for the use of the county road fund. Any action for a penalty incurred under the last section must be commenced within six months. En. March 12, 1872.

§ 2936. Liability of owners for damages done by drivers. The owner of every vehicle running or traveling upon any road for the conveyance of passengers, is liable for all damages to persons or property done by any person in his employment as a driver while driving such vehicle, whether done willfully or negligently, or otherwise, in the same manner as such driver would be liable. En. March 12, 1872.

Carriers of persons: Civ. Code, secs. 2096 et seq.
Common carriers: Civ. Code, secs. 2186 et seq.

§ 2937. Exceptions to preceding sections. Nothing contained in the six preceding sections must affect any law

concerning hackney coaches or carriages in any city, nor affect laws or ordinances of any city for the licensing or regulating such coaches or carriages. En. March 12, 1872.

§ 2938. Protection of bridges. The owner of any toll bridge, and any plank road company owning a bridge of not less than twenty feet span, may put up conspicuously at each end of it notice in these words in large characters: "Five dollars' fine for riding or driving on this bridge faster than a walk"; and whoever rides or drives faster than a walk on such bridge forfeits to the owner the sum of five dollars. En. March 12, 1872.

Fast driving or riding on toll bridges, fine for: Pen. Code, sec. 388.

Part 3

TITLE VII.

GENERAL POLICE OF THE STATE.

Chapter I. Immigration, §§ 2949-2969.
II. Preservation of the Public Health, §§ 2978-3064.
III. Registry of Births, Marriages and Deaths, §§ 3074-3084.
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V. Cemeteries and Sepulture, §§ 3105-3111.
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CHAPTER I.

IMMIGRATION.

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§ 2968. Bond of commissioner.
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§ 2949. Duties of masters of vessels arriving in California. Within twenty-four hours after the arrival of any vessel arriving at any of the ports of this state, bringing passengers from any place out of this state, the master of such vessel must make on oath to the commissioner of immigration at such port a written report. En. March 12, 1872.

Cal.Rep.Cit. 76, 122; 79, 89.

Chinese immigration to be discouraged: Const. Cal. 1879, art. XIX, sec. 4.

Importing foreign convicts is misdemeanor: Pen. Code, sec. 173. Separate prosecution for each person landed: Sec. 175.

Landing Chinese without permit, punishment for: Pen. Code, sec. 174. Separate prosecution for each person landed: Sec. 175.

§ 2950. Form of report. The report must state:

1. The name, place of birth, last residence, age, and occupation of all such passengers who are not citizens, or who shall have, within the last preceding twelve months, arrived from any country out of the United States, and who have not been examined, bonded, or paid commutation money, as provided in this chapter, or have been landed from any such vessel at any place during her last voyage, or who have gone on board of any vessel with the intention of coming into this state, or who may have died during the last voyage of such vessel; and,

2. Whether any of the passengers so reported are lunatic, idiotic, deaf, dumb, blind, crippled, infirm, or are lepers, or persons affected with any of the diseases known as leprosy or elephantiasis.

3. The names and residences of the owners of such vessels. En. March 12, 1872. Am'd. 1873-4, 38; 1875-6, 53.

Subd. 2. Lepers, disposition of: See post, sec. 2952.

§ 2951. **Oath to be administered to certain passengers.** The master or commander of the vessel must administer to any passenger of foreign birth, who declares himself a citizen of the United States, the following oath: "I ———, do solemnly swear (or affirm) that I was born in ———; that I am a naturalized citizen of the United States; that I was naturalized and received my certificate of naturalization in the state of ———, in the year ——." En. March 12, 1872.

§ 2952. **Lepers, lazarettos for.** It shall not be lawful for lepers or persons affected with leprosy or elephantiasis to live in ordinary intercourse with the population of this state; but all such persons shall be compelled to inhabit such lazarettos or lepers' quarters as may be assigned to them by the board of supervisors of the city or county in which they shall be domiciled or settled, and the board of supervisors are vested with power and are required to make all necessary provisions for the separation, detention, and care of lepers or persons affected with leprosy or elephantiasis, settled or domiciled in their respective cities or counties. The superintendent or manager of all lepers' quarters under this chapter shall forward quarterly statements, showing the name, age, sex, and birthplace of each leper in such quarter, to the secretary of state, who shall keep a proper record of such matters for the information of the public. En. March 12, 1872. Rep. 1873-4, 39. En. Stats. 1873-4, 39. Am'd. 1875-6, 53.

§ 2953. **Additional bond in certain cases. (Repealed.)** En. March 12, 1872. Rep. 1873-4, 39.

§ 2954. **Nature of bond.** The bond required by the next preceding section, must be a separate bond for each passenger, and the same sureties must not be upon more than one bond. Each bond must be secured by two or more sufficient sureties, residents of the state, each of whom must prove, before the commissioner of immigration, by oath or otherwise, indorsed in writing on such bond, that he is a freeholder and resident of the state, and is worth double the amount of the penalty of the bond in real estate,

over and above all his debts and liabilities. The bond may, at the option of the party, be secured by mortgage on real estate, or by the pledge and transfer of United States bonds, or controller's warrants of this state in any amount sufficient to secure the same. En. March 12, 1872. Am'd. 1873-4, 41.

§ 2955. Lepers, examination and disposition of. The commissioner of immigration must satisfy himself whether or not any person who shall arrive in this state, by vessel from any foreign port or place, is a leper, or affected with the disease known as leprosy or elephantiasis, before such person shall mingle with the population of this state. For the purpose of ascertaining said fact the commissioner is vested with the power and authority to detain all such persons on board any such vessel so arriving, and to assign the vessel to a berth or anchorage separate and apart from other vessels, and at a safe and suitable distance from the shore, if in his judgment it shall be necessary, until such fact can be fully ascertained by him. Such fact shall be ascertained by personal inspection and examination of each and every person on board such vessel; and the commissioner of immigration is authorized, empowered, and required to make such personal inspection and examination of all persons so arriving by any such vessel, the same to be made at such berth or anchorage as he shall, in his discretion, assign to such vessel for that purpose, and shall be made before the landing of any person thereupon. All of such persons who, upon inspection and examination, are found to be lepers, or affected with the disease known as leprosy or elephantiasis, shall be taken in charge by the commissioner of immigration, and placed in a suitable lazaretto, or lepers' quarter, to be provided or designated by the board of supervisors, whenever necessary for that purpose, as hereinbefore prescribed, and there detained and properly cared for, separate and apart from the general population of this state, so long as they, the said lepers, shall elect to remain in the state of California, or until they shall have recovered from said disease, and no longer. All of such persons as shall be found to be free from said disease shall be allowed to depart and go at their will, without unnecessary detention or delay, and shall be entitled to receive a certificate of the fact of their freedom from said disease from said commissioner. For his services in

making such examination and inspection the commissioner of immigration shall demand and collect from the master, owner, or consignee of such vessel the sum of seventy cents in U. S. gold or silver coin, for each and every person so examined or inspected, which sum, except four thousand dollars a year and expenses of office, shall, when required for such purpose, be paid by the commissioner into the state treasury, to be used in the maintenance, when necessary, of such lazarettos or lepers' quarters as shall be constructed under this law. Any master, owner, or consignee of any vessel arriving at any port of this state who shall fail or refuse to perform, or permit the performance of, any of the acts or things required by this chapter, or to take and occupy with his vessel the berth or anchorage assigned for the same by the commissioner, pending the examination and inspection herein provided for, or who shall permit or allow any person arriving in such vessel to depart therefrom, and to communicate, mingle, or associate with the population of this state or any part thereof, until after such examination and inspection by the commissioner is had, shall, for every such act or omission, forfeit to the commissioner of immigration the sum of one thousand dollars in U. S. gold coin, to be sued for and recovered by suit in any court of competent jurisdiction, and to be applied in like manner with the fees. And any master, owner, or consignee of any such vessel so arriving, who shall refuse or neglect to pay or cause to be paid to said commissioner the fee of seventy cents for the examination and inspection of each and every person so arriving in such vessel, shall forfeit to said commissioner, for each case, the sum of five hundred dollars in U. S. gold coin, to be recovered and applied as above. And the commissioner shall have a lien upon the vessel, and the same shall be sold to pay any judgment recovered under this act. The commissioner shall have the power to call in the aid of the sheriff and all police authorities to assist in enforcing this law. And he may appoint one or more deputies under him, who shall be invested with all the powers of the commissioner and may discharge his official duties when required by him. The commissioner of immigration must prepare and transmit to the secretary of state quarterly statements, certified under his hand and seal, showing the name, age, sex, birthplace, and present residence of every

leper, or person affected with leprosy or elephantiasis, examined or inspected by him, as well as any other information or fact touching the character and prevalence of said disease within his knowledge. En. March 12, 1872. Rep. 1873-4, 41. En. Stats. 1875-6, 54. Am'd. 1875-6, 54.

Cal.Rep.Cit. 65, 563; 70, 214; 76, 122; 76, 123.

Fees of commissioner: See post, sec. 2969.

§ 2956. **Action on bond.** If any person for whom a bond has been given under this chapter, within the time specified in such bond, becomes chargeable upon any city, town, or county of this state, an action may be brought upon such bond in the name of the people of this state, by the district attorney of the county. The plaintiff in the action is entitled to recover upon such bond, from time to time, so much money, not in the whole exceeding the penalty of such bond, exclusive of costs, as may be sufficient to defray the expense incurred by any such city, town, or county, for the maintenance and support of the person for whom the bond may have been given. The amount of such recovery may be collected from the sale of the real estate or other security mortgaged, pledged, or deposited therefor, in conformity with this chapter. En. March 12, 1872.

§ 2957. **Penalty for neglect to give bond.** If any person or consignee neglects or refuses to give any of the bonds required by this chapter within three days after the landing of such passenger, or the indorsement of the commissioner, or does not within that time make the commutation authorized by section 2955, he is liable to the state of California in the penal sum of one thousand dollars for each passenger on whose account such bond may have been required, or for whom such commutation might have been made under this chapter. En. March 12, 1872.

§ 2958. **Commutation fund, where placed.** All moneys received in commutation of bonds, and paid into the state treasury, must be placed to the credit of the general fund. En. March 12, 1872. Am'd. 1873-4, 132.

Commutation of bonds: See post, sec. 2960.

§ 2959. **Fines and penalties, lien on vessel.** For all fines and penalties imposed by this chapter upon any master or commander, owner or consignee, for any omission, neglect,

or refusal to perform any act or duty required by this chapter, such vessel is liable; and the amount of such fines or penalties are a lien upon such vessel, and have priority over all other liens, except those for seamen's wages, bottomry bonds, and respondentia. Such penalties and fines may be sued for and recovered in a civil action, with costs of suit, by the commissioner, or by his authorized attorney, in the name of the people of the state of California, in any court having cognizance thereof, and when recovered must, after deducting the expenses, be paid into the state treasury. En. March 12, 1872.

Actions against vessels, etc.: Code Civ. Proc., secs. 813-827.

Importing forbidden persons, punishment for: See Pen. Code, secs. 173-175.

§ 2960. Other commutations. The commissioner may compound or commute, for any of the penalties or fines, upon such terms as he thinks proper, and at the end of every month report to the controller of state the reasons and causes of such compounding or commutation. He may also compound or commute, with the owner or consignee of any vessel, for any bond required to be given by such owner or consignee for such passengers as have been paupers in any other country, or who, from their condition at the time of their arrival in this state, or from sickness or disease at the time of their leaving the port of departure, are a public charge, or likely soon to become so; such commutation to be fixed by the commissioner at such sum as he may deem sufficient to defray the necessary expenses of such persons during the continuance of their then sick, disabled or infirm state. En. March 12, 1872.

§ 2961. Commutation money to be paid into state treasury. The commissioner receiving any commutation money, or any moneys from fines or penalties, under this chapter, must account for and pay the same, less twenty per cent, which he may retain as his compensation, on the first Tuesday of every month, to the treasurer of state, in the same manner in which county treasurers account. He must specify in his account the names of the parties paying each sum of money, the date of such payment, for what paid, or the name of the vessel and the number of passengers on account of whom it was paid, or annex

thereto an affidavit of its correctness. The commissioner must also furnish to the parties paying any commutation money, or any money from other sources, receipts in duplicate, specifying the amount paid, the name of the vessel, and the number of passengers on account of whom or for what it was paid. En. March 12, 1872. Am'd. 1873-4, 41.

Commutation money: See ante, sec. 2960.

§ 2962. Certain vessels exempted. Masters of vessels arriving at any of the ports of this state from any port in this state, or from Oregon, or Washington Territory, are exempt from making the statement required by this chapter when the vessels in which they arrive have not taken on board at their port of departure, or at any intermediate port, any alien passenger, to be landed at the port of arrival; and masters of vessels arriving from Panama are also exempted from the provisions of this chapter when they have not landed, or are not about to land, passengers who took their departure from ports other than the port of New York; and in no case must such master be required to report any passenger other than way passengers taken on board between the port of New York and the port of arrival in this state. En. March 12, 1872.

§ 2963. Certain persons exempted. The consuls, ministers, agents, or other public functionaries of any foreign government, arriving in this state in their official capacity, are exempt from the provisions of this chapter. En. March 12, 1872.

§ 2964. Powers and duties of commissioners of immigration. The commissioner of immigration must approve all bonds and administer all oaths required in the discharge of his duties. Whenever it appears that the master or commander of any vessel has not made a full and correct report, as provided by this chapter, the commissioner must inquire into the same, and for that purpose may require the attendance of witnesses before him in the same manner as notaries public may in civil cases. Testimony so taken may be read as evidence on the trial of any action commenced for any penalty or forfeiture accruing under the provisions of this chapter in the same manner and with the like effect as if regularly taken in such action. En. March 12, 1872.

Notaries public, attendance of witness before: Ante, sec. 794, subd. 3.

§ 2965. **Same and fees.** The commissioner of immigration must prepare all bonds required to be given by the owners or consignees, masters, captains, or commanders of vessels, and administer the oaths to the sureties upon such bonds, and for each bond he may charge and collect a fee of three dollars, and for the administration of each oath he may charge one dollar; and if he neglects to administer the oaths to such sureties, or to require them to justify on each bond, as required herein, or if he demands or receives any other or larger fees, commissions, or compensation for services than is expressly allowed in this chapter, he shall pay to the state of California the penal sum of one hundred dollars for each offense. En. March 12, 1872.

Cal.Rep.Cit. 79, 89.

Bond and sureties: Ante, sec. 2954.

§ 2966. **Ex-officio commissioners.** In all the ports of this state other than San Francisco the mayor or chief municipal officer at such port, or if there be none such, then the sheriff of that county is ex-officio commissioner of immigration for such port, and in carrying out the provisions of this chapter, and has all the powers and is liable to all the penalties provided herein. En. March 12, 1872.

§ 2967. **Duties of district attorneys.** (Repealed.) En. March 12, 1872. Rep. 1873-4, 42.

§ 2968. **Bond of commissioner.** The commissioner of immigration for the port of San Francisco must execute an official bond in the sum of twenty-five hundred dollars. En. March 12, 1872. Am'd. 1875-6, 55.

Official bonds: See ante, secs. 947 et seq.

§ 2969. **Disposition of funds.** All moneys received by the state controller from the office of commissioner of immigration shall constitute a special fund, to be designated as "The Leprosy Fund." The commissioner of immigration is hereby authorized and required to pay into the state treasury, monthly, in the same manner as county treasurer's account, all per capita fees collected by him,

and moneys derived from fines, penalties and forfeitures. The state controller is hereby authorized and required to audit the salary and office expenses of the commissioner of immigration monthly, the same to be paid in the controller's warrants on said special fund; provided, however, that no such account of salary and office expenses shall be audited in excess of the amount of "leprosy funds" on hand, and no liability shall accrue to the state for any deficiency relating thereto.

Sec. 2. The commissioner of immigration shall not appoint more than one deputy, and the salary of said deputy is hereby fixed at one hundred dollars per month; and furthermore, the governor is hereby authorized to suspend the payment for said deputy whenever the employment of the same may be deemed in his judgment unnecessary.

Sec. 3. The commissioner of immigration shall hold office during the governor's pleasure.

Sec. 4. All acts and parts of acts in conflict with this section are hereby repealed. En. Stats. 1883, 368.

Cal.Rep.Cit. 70, 215; 76, 122; 76, 125; 122, 540; 131, 204.

CHAPTER II.

PRESERVATION OF PUBLIC HEALTH.

Article I. State Board of Health, §§ 2978-2983.
II. Vaccine Agent, §§ 2993, 2994.
III. Health and Quarantine Regulations for the City and Harbor of San Francisco, §§ 3004-3035.
IV. Health Regulations for the City of Sacramento, §§ 3042-3049.
V. Health and Quarantine of other Cities, Towns, and Harbors, §§ 3059-3064.

ARTICLE I.

STATE BOARD OF HEALTH.

§ 2978. Who constitute the state board.
§ 2979. Duties of.
§ 2979a. Same in case of plague or other infectious disease.
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§ 2981. Meetings, and election of officers.
§ 2982. Duties of secretary. Salary of secretary.
§ 2983. Expenses of, limited.

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§ 2978. Who constitute the state board. The state board of health consists of seven physicians—two of the city of Sacramento, and five from other portions of the

state—appointed by the governor for the term of four years. En. March 12, 1872.

State board of health, legislature to provide for maintenance and efficiency of: Const. Cal., art. XX, sec. 14. Report of: Ante, secs. 332, 334. Number of members composing: Ante. sec. 343. Appointment and term: Ante, secs. 368, subd. 2, 369.

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§ 2979. **Duties of.** The state board of health must place themselves in communication with the local boards of health, hospitals, asylums, and public institutions throughout the state, and take cognizance of the interests of health and life among the citizens generally. They must make sanitary investigations and inquiries respecting the causes of disease, especially of epidemics, the source of mortality, and the effects of localities, employments, conditions, and circumstances on the public health, and gather such information in respect to these matters as they may deem proper for diffusion among the people. They may devise some scheme whereby medical and vital statistics of sanitary value can be obtained, and act as an advisory board to the state in all hygienic and medical matters, especially such as relate to the location, construction, sewerage, and administration of prisons, hospitals, asylums, and other public institutions. They must, at each biennial session of the legislature, make a report, with such suggestions as to legislative action as they deem proper. En. March 12, 1872.

Willful violation of health laws, punishment for: Pen. Code, sec. 377.

Failing to perform duty required under laws for preservation of health, if willful, is misdemeanor: Pen. Code, sec. 378.

Acts relating to state board of health: See General Laws, title Public Health.

Act to regulate quarantine: See General Laws, title Quarantine.

Act to provide for state analyst: See post, Appendix, title State Analyst.

§ 2979a. **Same in case of plague or other infectious disease.** It is the duty of every local board of health, and of each of the members thereof, and of every coroner and other public officer knowing, or having reason to believe, that any case of Asiatic cholera or of bubonic plague or any

other contagious or infectious disease exists or has recently existed within the city, city and county, town, township or county of which he is an officer, or of which such local board of health is an official body, to take such measures as may be necessary to prevent the spread of such disease and to at once report such case to the state board of health, which may thereupon take such measures as it may deem necessary to ascertain whether such case of cholera or plague, or any other contagious or infectious disease, exists, or has so existed, and to prevent the further spread of such contagion, and to that end such state board may, if it deems proper, take possession and control of the body of any living, or the corpse of any deceased, person which is or has been afflicted with either of such diseases, and may direct and take such means as it may deem expedient to arrest the further spread of such disease or diseases. En. Stats. 1901, 99.

§ 2980. To report as to the effect of intoxicating liquors. The board must examine into and report what, in their best judgment, is the effect of the use of intoxicating liquor as a beverage upon the industry, prosperity, happiness, health, and lives of the citizens of the state; also, what legislation, if any, is necessary in the premises. En. March 12, 1872.

§ 2981. Meetings, and election of officers. The board must meet at the capital of the state, at least once in every three months. They must elect from their own number a president and a permanent secretary; the latter must reside at the capital, and is their executive officer. No member, except the secretary, receives any compensation; but the actual traveling expenses of the members, while engaged in the duties of the board, are allowed, and paid out of the general fund. En. March 12, 1872.

§ 2982. Duties of secretary. Salary of secretary. The secretary must superintend the work and perform such other duties as the board may require. He must furnish the legislature, when in session, such information cognate to this chapter as, from time to time, may be necessary. An annual salary of twenty-five hundred dollars, and his office and other necessary expenses incurred in the performance of his duties, must be paid to him in the same manner as salaries of state officers are paid. En. March 12, 1872.

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§ 2983. **Expenses of, limited.** The expenses of the board, including the salary of the secretary, must not exceed four thousand dollars per annum. En. March 12, 1872.

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ARTICLE II.

VACCINE AGENT.

§ 2993. Agent to obtain genuine vaccine matter.
§ 2994. Compensation and duty of.

§ 2993. **Agent to obtain genuine vaccine matter.** The vaccine agent must obtain a supply of the genuine vaccine matter, and preserve the same for the use and benefit of the citizens of this state. En. March 12, 1872.

Act to encourage general vaccination: See General Laws, title Public Health.

§ 2994. **Compensation and duty of.** Such agent must furnish genuine vaccine matter, approved by the state board of health, to any regular practicing physician in good standing in his profession in this state. He may charge and receive for every parcel of vaccine matter furnished the sum of five dollars, which is in full compensation for his services and expenses. En. March 12, 1872.

ARTICLE III.

HEALTH AND QUARANTINE REGULATIONS FOR THE CITY AND HARBOR OF SAN FRANCISCO.

§ 3004. Quarantine grounds, location of.
§ 3005. Board of health of San Francisco.
§ 3006. Mayor ex-officio president. Time of meeting.
§ 3007. Health officer. His election.
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§ 3026. Return of interments to be made.
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§ 3029. Health officer to keep fee book.
§ 3030. Bond of health officer.
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§ 3032. Actions, in whose name maintained.
§ 3033. Vacation of infected and dangerous houses.
§ 3034. Physician to report infectious diseases.
§ 3035. Board of health to have charge of cemetery.

§ 3004. Quarantine grounds, location of. The quarantine grounds of the bay and harbor of San Francisco are at the anchorage of Saucelito. En. March 12, 1872.

Cal.Rep.Cit. 79, 110; 79, 112; 84, 306; 135, 420.

§ 3005. Board of health of San Francisco. The board of health of the city and county of San Francisco consists of the mayor of the city and county and four physicians in good standing, residing in the city and county of San Francisco, appointed by the governor and holding their offices for the term of five years. En. March 12, 1872.

Cal.Rep.Cit. 79, 110; 79, 112; 84, 307.

§ 3006. Mayor ex-officio president. Time of meeting. The mayor is ex-officio president of the board. The board must meet monthly, and at such other times as the president may direct. In the absence of the president, the board may elect a chairman, who is clothed with the same powers as the president. En. March 12, 1872.

§ 3007. Health officer. His election. The health officer for the city and county and port of San Francisco is elected by the board of health and holds office at its pleasure. He must be a graduate of some medical college, in good standing, and must reside within the city limits of San Francisco. En. March 12, 1872.

Cal.Rep.Cit. 79, 110; 84, 306.

§ 3008. Powers of. The health officer is the executive officer of the health department, and he may, in his discretion, cause the removal to a hospital of any and all persons, within the limits of the city and county of San Francisco, infected with variola. En. March 12, 1872. Am'd. 1877-8, 52.

Cal.Rep.Cit. 84, 306.

§ 3009. Appointment of certain officers. The board of health must appoint a quarantine officer, who shall be a physician in good standing, a secretary, one assistant

secretary, six health-inspectors, one market inspector, and one messenger, whose duties must be fixed by the board of health. They must also appoint one superintendent physician, one resident physician, one steward, one matron, one apothecary, two visiting physicians, two visiting surgeons, as officers of the city and county hospital in and for the city and county of San Francisco, one each of said visiting physicians and surgeons to be nominated by the faculty of the medical department of the University of California, and one each of said visiting physicians and surgeons to be nominated by the medical college of the Pacific. Said board may also appoint one engineer for the city and county hospital. They may also appoint one superintendent, one resident physician, one matron, and such other employees as are now authorized by law to be employed in and for the almshouse of said city and county. They shall also have power to appoint and prescribe the duties of one city physician and one assistant city physician, who shall be designated as police surgeons, and whose duty it shall be to make all autopsies required of them by the coroner of said city and county. And said board is also empowered to appoint such employees and such medical attendants as they may deem necessary in the health department, and in all the various institutions which are by law placed under their supervision; and the compensation of such employees and medical attendants shall be fixed by the board of health. The appointing power aforesaid is vested solely in said board of health, and said board shall have power to prescribe the duties of said appointees, and shall not remove the same without just cause. The heads of departments appointed by the board of health, to wit, the health officer, resident physician of city and county hospital, and superintendent of almshouse, shall not be removed except by a concurrence of four members of said board of health. En. March 12, 1872. Am'd. 1873-4, 132; 1873-4, 135; 1877-8, 53.

Cal.Rep.Cit. 79, 110; 127, 391; 127, 392; 127, 398.

§ 3010. **Compensation of officers and employees.** The following annual salaries are hereby allowed to the officers of the health department, and such other officers and employees as are mentioned in the preceding section, viz.: Health officer, three thousand dollars; quarantine officer, eighteen hundred dollars; secretary, twenty-one hundred

dollars; assistant secretary, twelve hundred dollars; health inspectors, twelve hundred dollars each; market inspector, twelve hundred dollars; messenger, nine hundred dollars; city physician, eighteen hundred dollars; assistant city physician, twelve hundred dollars; all of said salaries, together with the salaries of such other employees of the health department as may be appointed by the board of health, must be paid in equal monthly installments out of the general fund of the city and county of San Francisco, in the same manner as the salaries of the other officers of said city and county are paid. There shall be paid to the officers and employees of the city and county hospital and almshouse the following annual salaries, viz.: Superintendent physician, twenty-four hundred dollars; resident physician, fifteen hundred dollars; steward, fifteen hundred dollars; matron, seven hundred and twenty dollars; one apothecary, twelve hundred dollars; visiting physicians and surgeons, twelve hundred dollars each; engineer, twelve hundred dollars; superintendent of almshouse, twenty-four hundred dollars; resident physician of almshouse, fifteen hundred dollars; matron of almshouse, seven hundred and twenty dollars; and all other medical attendants and employees of said institutions are to be paid such sums as may be authorized by law, and as provided in the preceding section; all to be paid in equal monthly installments out of the hospital and almshouse fund of said city and county of San Francisco; and the auditor of said city and county is hereby directed to audit the said demands, payable out of the funds aforesaid, upon the approval of the same by the said board of health, and also to audit all demands for salaries of medical attendants and employees appointed by the board of health in accordance with this chapter, for the amounts authorized to be paid, when the same shall have been approved by said board; and the treasurer of said city and county must pay said demands out of said funds. The clerk of the mayor of the city and county of San Francisco shall not receive any compensation as clerk of the board of health. En. March 12, 1872. Am'd. 1873-4, 133; 1873-4, 135; 1877-8, 53.

Cal.Rep.Cit. 127, 398.

§ 3011. **Expenses of health officer.** The health officer, in addition to his salary, receives such sums for the neces

sary expenses of his office as the board of health may direct, and the auditor must audit and the treasurer pay such sums out of the general fund. The board of supervisors must provide proper offices for the health department. En. March 12, 1872.

§ 3012. General powers of board of health. The board of health have general supervision of all matters appertaining to the sanitary condition of the city and county, including the city and county hospital, the county jail, almshouse, industrial school, and all public health institutions provided by the city and county of San Francisco; and may adopt such orders and regulations, and appoint or discharge such medical attendants and employees, as to them seems best to promote the public welfare; and may appoint as many health inspectors as they deem necessary in time of epidemics. En. March 12, 1872.

Cal.Rep.Cit. 84, 306; 127, 399.

§ 3013. Shipmasters to report infected vessels. Shipmasters bringing vessels into the harbor of San Francisco, and masters, owners, or consignees having vessels in the harbor which have on board any cases of Asiatic cholera, small-pox, yellow, typhus, or ship fever, must report the same, in writing, to the quarantine officer before landing any passengers, casting anchor, or coming to any wharf, or as soon thereafter as they, or either of them, become aware of the existence of either of the diseases on board of their vessels. En. March 12, 1872. Am'd. 1877-8, 54.

Cal.Rep.Cit. 79, 111.

§ 3014. Passengers and freight, permit to land. No captain or other officer in command of any vessel sailing under a register, arriving at the port of San Francisco, nor any owner, consignee, agent, or other person having charge of such vessel must, under a penalty of not less than one hundred dollars nor more than one thousand dollars, land, or permit to be landed, any freight, passengers, or other persons from such vessel until he has reported to the quarantine officer, presented his bill of health, and received a permit from that officer to land freight, passengers, or other persons. En. March 12, 1872. Am'd. 1877-8, 54.

Cal.Rep.Cit. 79, 111.

§ 3015. Duties of pilots. Every pilot who conducts into the port of San Francisco any vessel subject to quarantine or examination by the quarantine officer, must:

1. Bring the vessel no nearer the city than is allowed by law.

2. Prevent any person from leaving, and any communication being made with the vessel under his charge, until the quarantine officer has boarded her and given the necessary orders and directions.

3. Be vigilant in preventing any violation of the quarantine laws, and report, without delay, all such violations that come to his knowledge to the quarantine officer.

4. Present the master of the vessel with a printed copy of the quarantine laws, unless he has one.

5. If the vessel is subject to quarantine, by reason of infection, place at the mast-head a small yellow flag. En. March 12, 1872. Am'd. 1877-8, 54.

§ 3016. Penalty for neglect of masters. Every master of a vessel subject to quarantine or visitation by the quarantine officer, arriving in the port of San Francisco, who refuses or neglects either:

1. To proceed with and anchor his vessel at the place assigned for quarantine, when legally directed so to do; or,

2. To submit his vessel, cargo, and passengers to the quarantine officer, and furnish all necessary information to enable that officer to determine what quarantine or other regulations they ought respectively to be subject; or,

3. To report all cases of disease and of deaths occurring on his vessel, and to comply with all the sanitary regulations of the bay and harbor—

Is liable in the sum of five hundred dollars for every such neglect or refusal. En. March 12, 1872. Am'd. 1877-8, 55.

Like failure by master, punishment for: Pen. Code, sec. 376.

Acts relating to quarantine: See General Laws, title Quarantine.

§ 3017. Vessels subject to quarantine. All vessels arriving off the port of San Francisco from ports which have been legally declared infected ports, and all vessels arriving from ports where there is prevailing at the time of their departure, any contagious, infectious, or pestilential

diseases, or vessels with decaying cargoes, or which have unusually foul or offensive holds, are subject to quarantine, and must be, by the master, owner, pilot or consignee, reported to the quarantine officer without delay. No such vessel must cross a right line drawn from Meiggs' Wharf to Alcatraz Island until the quarantine officer has boarded her and given the order required by law. En. March 12, 1872. Am'd. 1877-8, 55.

Cal.Rep.Cit. 79, 111.

§ 3018. **Examination and inspection of vessels.** The quarantine officer must board every vessel subject to quarantine or visitation by him, immediately on her arrival, make such examination and inspection of vessel, books, papers, or cargo, or of persons on board, under oath, as he may judge expedient, and determine whether the vessel should be ordered to quarantine, and if so, the period of quarantine. En. March 12, 1872. Am'd. 1877-8, 55.

§ 3019. **Passengers not to be landed without permit.** No captain or other officer in command of any passenger-carrying vessel of more than one hundred and fifty tons burden, nor of any vessel of more than one hundred and fifty tons burden, having passengers on board, nor any owner, consignee, agent, or other person having charge of such vessel or vessels, must, under a penalty of not less than one hundred dollars nor more than one thousand dollars, land or permit to be landed, any passenger from the vessel until he has presented his bill of health to the quarantine officer and received a permit from that officer to land such passenger, except in such cases as the quarantine officer deems it safe to give the permit before seeing the bill of health. En. March 12, 1872. Am'd. 1877-8, 55.

§ 3020. **Fees of quarantine officer.** The following fees may be collected by the quarantine officer: For giving a permit to land freight or passengers or both, from any sailing vessel of less than five hundred tons burden, from any port out of this state, two dollars and fifty cents; over five hundred and under one thousand tons burden, five dollars; each additional one thousand tons burden or fraction thereof, an additional two dollars and fifty cents; for steam vessels, propelled in whole or in part by

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steam, of one thousand tons burden or less, five dollars, and two dollars and fifty cents for each additional one thousand tons burden or fraction thereof; but vessels not propelled in whole or in part by steam, sailing to and from any port or ports of the Pacific States, of the United States, or territories, and whaling vessels, entering the harbor of San Francisco, are excepted from the provisions of this section. En. March 12, 1872. Am'd. 1877-8, 56.

§ 3021. **Compulsory vaccination.** The board of health may enforce compulsory vaccination on passengers in infected ships or coming from infected ports. En. March 12, 1872.

§ 3022. **Hospitals to be provided.** The board of health may provide suitable hospitals, to be situated at or near Saucelito, and furnish and supply the same with nurses and attaches, and remove thereto all persons afflicted with cholera, smallpox, yellow, typhus, or ship fever. En. March 12, 1872.

Cal.Rep.Cit. 79, 111.

§ 3022½. **Home of inebriates.** First—The board of supervisors of any county, or city and county, where land has heretofore been reserved, set apart, and designated by said board of supervisors, or a committee of said board, for public use as a home for inebriates, shall cause to be erected before August first, one thousand eight hundred and ninety-six, a suitable hospital and home for the care and treatment of dipsomaniacs and inebriates, and provide for the furnishing and maintenance of the same. The plans of construction of said hospital and home must be drawn under the direction of the board of health of said county, or city and county.

Second—When the building or buildings constructed under the provisions of this section are so far completed that in the opinion of the board of health of said county, or city and county, commitments may properly be made thereto, said board of health shall so notify the magistrates of the said county, or city and county; and thereafter the said magistrates may commit to said hospital and home, for a term not exceeding one year, any person given to dipsomania or inebriety, whether in public or private, and who in his opinion, is a proper subject

for its treatment or custody; provided, however, that no such person shall be so committed until satisfactory evidence shall be furnished to the magistrate before whom the proceedings for commitment are had, that such person or persons are not of bad repute or of bad character, apart from their habits of inebriety; and in all proceedings relative to the commitment of any such person, it shall be specifically alleged that they are either dipsomaniacs or inebriates, as the case may be.

Third—When it shall appear to the medical superintendent and the said board of health that any person or persons held in said hospital and home will not continue to be subject to dipsomania or inebriety, or will be sufficiently provided for by themselves or their guardians, relatives, or friends, they may issue to them a permit to be at liberty, upon such conditions as they may deem best, and they may revoke said permit at any time previous to its expiration. The violation by the holder of such permit of any of the terms or conditions of the same shall of itself make said permit void. When a permit becomes void in any manner, the medical superintendent, or a member of the board of health, may issue an order authorizing the arrest of the holder or holders of such permit and their return to the hospital and home, and such order of arrest may be served by any officer authorized to serve criminal process in any county, or city and county, of this state. Any person at liberty from the hospital and home upon a permit, as aforesaid, may voluntarily return to the hospital and home and put himself in the custody of the medical superintendent. The holder of said permit, when returned to said hospital and home, as aforesaid, whether voluntarily or otherwise, shall be detained therein according to the term of his original commitment. Such inmates of said hospital and home as are able to pay for their board shall be charged for the same.

Fourth—The board of health of said county, or city and county, shall provide for the management and government of said hospital and home for dipsomaniacs and inebriates. The said board of health must appoint a medical superintendent of said hospital and home, and furnish or supply the same with nurses and attaches. The medical superintendent shall be an elector of the

county, or city and county, a regular graduate of medicine, licensed to practice, and not less than thirty-five years of age, who shall have for a period of at least one year prior to his appointment, devoted his special professional attention to the treatment of dipsomania and inebriety as physician to a public or private home, hospital, asylum, or sanitarium for the care and treatment of dipsomaniacs and inebriates. The medical superintendent shall receive an annual salary of three thousand dollars, and shall be paid in equal monthly installments out of the general fund of said county, or city and county, in the same manner as the salaries of the other officers of said county, or city and county, are paid. Said medical superintendent shall not be removed by the said board of health except for good cause, duly set forth in a complaint, filed with the secretary of said board, a copy of which must be served upon said medical superintendent, and an opportunity given him to be heard in his defense.

Sec. 2. The act entitled "An act relating to the home of the inebriate, of San Francisco, and to prescribe the powers and duties of the board of managers and the officers thereof," approved April first, one thousand eight hundred and seventy, and all acts or parts of acts in conflict with the provisions of this act are hereby repealed. En. Stats. 1895, 201.

§ 3023. Records of births, deaths, and interments. The health officer must keep a record of all births, deaths, and interments occurring in the city and county of San Francisco. Such records, when filed, must be deposited in the office of the county recorder, and produced when required for public inspection. En. March 12, 1872.

Cal.Rep.Cit. 77, 440.

§ 3024. Returns of births, deaths, etc., of children. Physicians and midwives must, on or before the fourth day of each month, make a return to the health officer of all births, deaths, and the number of still-born children occurring in their practice during the preceding month. In the absence of such attendants, the parent must make such report within thirty days after the birth of the child. Such returns must be made in accordance with rules adopted, and upon blanks furnished by the board of health. En. March 12, 1872. 1877-8, 56.

Cal.Rep.Cit. 84, 309.

§ 3025. No bodies to be interred without permit. No person shall deposit in any cemetery, or inter in the city and county of San Francisco, any human body, without first having obtained and filed with the health officer a certificate signed by a physician or midwife, or a coroner, setting forth, as near as possible, the name, age, color, sex, place of birth, occupation, date, locality, and the cause of death of the deceased, and obtain from such health officer a permit; nor shall any human body be removed or disinterred without the permit of the health officer, or by order of the coroner. Physicians, when deaths occur in their practice, must give the certificate herein mentioned. Hereafter it shall be the duty of the assistant city physician, or police surgeons, to perform all autopsies which may be required in the coroner's office of the city and county of San Francisco, all such autopsies being made without charge to the city. It shall be the duty of the health officer to see that the dead body of a human being is not allowed to remain in any public receiving vault for a longer period than five days. At the expiration of that time he shall cause the body to be placed in a vault or niche constructed of brick, stone, or iron, and hermetically sealed. It shall also be his duty to require all persons having in charge the digging of graves and burial of the dead to see that the body of no human being who had reached ten years of age shall be interred in a grave less than six feet deep, or, if under the age of ten years, the grave to be not less than five feet deep. En. March 12, 1872. Am'd. 1877-8, 56.

Cal.Rep.Cit. 84, 306; 84, 307; 84, 309.

§ 3026. Return of interments to be made. Superintendents of cemeteries, within the boundaries of the city and county of San Francisco must return to the health officer, on each Monday, the names of all persons interred or deposited within their respective cemeteries for the preceding week. En. March 12, 1872. Am'd. 1877-8, 57.

§ 3027. Bodies not to be removed without permit. No superintendent of a cemetery can remove or cause to be removed, disinter or cause to be disinterred, any corpse that has been deposited in the cemetery, without a permit from the health officer, or by order of the coroner. En. March 12, 1872.

Violating sepulture and the remains of the dead: See Pen. Code, secs. 290 et seq.

§ 3028. Nuisances on premises of non-residents. Whenever a nuisance shall exist on the property of any non-resident or any property, the owner or owners of which cannot be found by either health inspector, after diligent search, or on the property of any owner or owners, upon whom due notice may have been served, and who shall, for three days, refuse or neglect to abate the same, or on any city property, it shall be the duty of the board of health to cause the said nuisance to be at once removed or abated, and to draw upon the general fund for such sums as may be required for its removal or abatement, not to exceed two hundred dollars; provided, that whenever a larger expenditure is found necessary to be made for the removal or suppression of any nuisance, the board of supervisors of said city and county shall, upon the written application of the board of health, by ordinance, appropriate, allow, and order paid out of the general fund, such sum or sums as may be necessary for that purpose, and the auditor shall audit, and the treasurer shall pay all appropriations of money made in pursuance of this section, in the same manner as is now provided by law for auditing and paying demands upon the treasury; said sum or sums so paid shall become a lien on the property from which said nuisance has been removed or abated in pursuance of this section, and may be recovered by an action against such property. And it shall be the duty of the city and county attorney to foreclose all such liens in the proper court, in the name of and for the benefit of said city and county, and when the property is sold enough of the proceeds shall be paid into the city and county treasury to satisfy the lien and costs, and the overplus, if any there be, shall be paid to the owner of the property, if he be known, and if not, then into the court for his use when ascertained. The board of health is hereby vested with power to act upon, define, determine, and adjudge what shall constitute a nuisance in said city and county, and to require the same to be abated in a summary manner. Any person who maintains, permits, or allows a nuisance to exist upon his or her property or premises, after the same has been determined by said board to be a nuisance, and after notice to

remove the same has been served upon such person, is guilty of a misdemeanor, and shall be punished accordingly; and each day of such existence, after notice, shall be deemed a separate and distinct offense, and it is the duty of the health officer to prosecute all persons guilty of violating this law by continuous prosecutions until the same is abated and removed. En. March 12, 1872. Am'd. 1877-8, 57.

§ 3029. **Health officer to keep fee book.** The health officer must keep in his office a book in which he must make an entry of all fees collected by him. He must pay all fees collected to the city and county treasurer weekly, to the credit of the general fund. En. March 12, 1872.

§ 3030. **Bond of health officer.** The health officer must execute an official bond, to be approved by the board of health, in the sum of ten thousand dollars. En. March 12, 1872.

Official bonds: Ante, secs. 947 et seq.

§ 3031. **Officers empowered to administer oaths.** Any members of the board of health, health officer, or quarantine officer, or secretary, or assistant secretary, of the health department, is empowered to administer oaths on business connected with that department. En. March 12, 1872. Am'd. 1877-8, 58.

§ 3032. **Actions, in whose name maintained.** Whenever any cause of action arises under any of the provisions of this chapter, suit may be maintained therein, in the name of the health officer, in any district court of this state. En. March 12, 1872.

§ 3033. **Vacation of infected and dangerous houses.** Whenever it shall be certified to the board of health, by the health officer, that any building, or part thereof, is unfit for human habitation, by reason of its being so infected with disease as to be likely to cause sickness among the occupants, or by reason of its want of repair has become dangerous to life, said board may issue an order, and cause the same to be affixed conspicuously on the building, or part thereof, and to be personally served upon the owner, agent, or lessee if the same can be found in this state, requiring all persons therein to

vacate such building, for the reasons to be stated therein as aforesaid. Such building, or part thereof, shall, within ten days thereafter be vacated, or within such shorter time, not less than twenty-four hours, as in said notice may be specified; but said board, if it shall become satisfied that the danger from said house, or part thereof, has ceased to exist, may revoke said order, and it shall thenceforward become inoperative. En. Stats. 1877-8, 58.

§ 3034. Physician to report infectious diseases. One—Every physician in the city and county shall report to the health officer, in writing, every patient he shall have laboring under Asiatic cholera, variola, diphtheria, or scarlatina, immediately thereafter, and report to the same officer every case of death from such disease, immediately after it shall have occurred.

Two—Every household in said city and county shall forthwith report, in writing, to the health officer, the name of every person boarding or an inmate at his or her house, whom he or she shall have reason to believe sick of cholera or smallpox, and any deaths occurring at his or her house from such disease. En. Stats. 1877-8, 58.

§ 3035. Board of health to have charge of cemetery. The board of health shall have entire charge of the city cemetery, and shall employ a superintendent, at a salary of seventy-five dollars per month, the same to be paid as the salaries of other employees are paid. En. Stats. 1877-8, 59.

Cal.Rep.Cit. 84, 306; 131, 174.

ARTICLE IV.

HEALTH REGULATIONS FOR THE CITY OF SACRAMENTO.

§ 3042. Board of health, who and how appointed.
§ 3043. Term of office.
§ 3044. Powers of the board of health.
§ 3045. Pest houses, how located and conducted.
§ 3046. Death records.
§ 3047. Enforcement of regulations. Health officer.
§ 3048. Expenses, how paid.
§ 3049. Compensation, how fixed.

§ 3042. Board of health, who and how appointed. The board of trustees of the city of Sacramento may establish by ordinance a board of health therefor, to consist of

five practicing physicians, graduates of a medical college of recognized respectability; and the president of the board of trustees is ex-officio president of the board. En. March 12, 1872.

§ 3043. **Term of office.** The members of the board hold their offices at the pleasure of the appointing power. En. March 12, 1872.

§ 3044. **Powers of the board of health.** The board of health of the city of Sacramento has a general supervision of all the matters appertaining to the sanitary condition of the city, and may make such rules and regulations in relation thereto as are not inconsistent with law. En. March 12, 1872.

§ 3045. **Pest houses, how located and conducted.** The board of health may locate and establish pest houses, and cause to be removed thereto, and kept, any person having a contagious or infectious disease; may discontinue or remove the same, and make such rules and regulations regarding the conduct of the same as are needful. En. March 12, 1872.

§ 3046. **Death records.** The board of health must exercise a general supervision over the death records of the city of Sacramento, and may adopt such forms and regulations for the use and government of physicians, undertakers, and superintendents of cemeteries, as in their judgment may be best calculated to secure reliable statistics of the mortality in the city and prevent the spread of disease. En. March 12, 1872.

§ 3047. **Enforcement of regulations. Health officer.** The board of trustees of the city of Sacramento must, by ordinance or otherwise, provide for enforcing such orders and regulations as the board of health may from time to time adopt; and in times of epidemics, or when deemed necessary by the board of health, a health officer must be employed to enforce the laws in relation to the sanitary condition of the city. En. March 12, 1872.

§ 3048. **Expenses, how paid.** All expenses necessarily incurred in carrying out the provisions of this article must be provided for by the board of trustees of the city

of Sacramento, who may make appropriation therefor out of the special street fund, if the same is sufficient; if not, they may, by taxation provide a fund therefor. En. March 12, 1872.

§ 3049. Compensation, how fixed. The board of trustees must fix the compensation of the board of health and the health officer. En. March 12, 1872.

ARTICLE V.

HEALTH AND QUARANTINE OF OTHER CITIES, TOWNS, AND HARBORS.

§ 3059. Boards of supervisors, may adopt article III.
§ 3060. Boards of supervisors may adopt article IV.
§ 3061. Board of health established in towns and cities.
§ 3062. May appoint health officer in lieu of board.
§ 3063. Per capita or property tax, how levied.
§ 3064. Compensation.

§ 3059. Boards of supervisors, may adopt article III. The board of supervisors of any county in which there is a port of entry or harbor, for which there is not otherwise provided health and quarantine regulations, may by an ordinance adopt the whole or any part of the provisions of article III of this chapter, appoint a board of health, or health officer, locate quarantine grounds when necessary, and provide for the enforcement of health and quarantine regulations. En. March 12, 1872.

Local adaptation of health and quarantine regulations: See post, sec. 4046, subd. 20.

§ 3060. Boards of supervisors, may adopt article IV. In like manner the board of supervisors of any county in which there is an unincorporated city or town, for which there is not otherwise provided a board of health or health regulations in time of epidemics, or the existence of contagious or infectious diseases, may by an ordinance adopt for such city or town, in whole or in part, the provisions of article IV of this chapter, for some definite period of time; and appoint therefor a board of health. En. March 12, 1872.

§ 3061. Board of health established in towns and cities. It shall be the duty of the board of trustees, council, or other corresponding board, of every incorporated town

and city of this state, to establish, by ordinance, a board of health for such town or city, to consist of five persons, one at least of whom shall be a practicing physician and a graduate of some reputable school of medicine, and one, if practicable, a civil engineer. The members of the board shall hold their offices at the pleasure of the appointing power. Every local board of health established in this state must:

First—Supervise all matters pertaining to the sanitary condition of their town or city, and make such rules and regulations relative thereto as are necessary and proper, and not contrary to law.

Second—Report to the secretary of the state board of health, at Sacramento, at such times as the state board of health may require:

a. The sanitary condition of their locality.

b. The number of deaths, with the cause of each, as near as can be ascertained, within their jurisdiction, during the preceding month.

c. The presence of epidemic or other dangerous, contagious, or infectious disease, and such other matters, within their knowledge or jurisdiction, as the state board may require.

The trustees, council, or other legislative board, by whatever name known, of any incorporated city or town of this state may, by ordinance, adopt any portion of articles III and IV of this chapter, or either of them, for some definite period of time, as may seem proper for the regulation of sanitary matters within their town or city. En. March 12, 1872. Am'd. 1877-8, 59.

§ 3062. May appoint health officer in lieu of board. The board of supervisors of each county must appoint, in each unincorporated city or town of five hundred or more inhabitants, a health officer, who has all the duties and powers of a board of health and health officer, as specified in this and the two preceding articles. En. March 12, 1872. Am'd. 1889, 43.

§ 3063. Per capita or property tax, how levied. All necessary expenses of enforcing this article are charges against the counties, cities, or towns, respectively, for the payment of which the county, city, or town, may levy a per capita tax of not exceeding three dollars, or a

property tax of not exceeding one fourth of one per cent yearly until the same is paid. En. March 12, 1872.

§ 3064. Compensation. The board of supervisors must fix the salary or compensation of boards of health or health officer, and provide for the expenses of enforcing the provisions of this article. If the board of supervisors or board of trustees, council, or other corresponding board of any incorporated town, neglects to provide a board of health or health officer by the first day of July, eighteen hundred and eighty-seven, the state board of health may direct the district attorney of the county to begin an action against such board of supervisors, or board of trustees, or corresponding board, to compel the performance of their duty, or may appoint a board of health, or health officer with the powers of a board of health, for such town or city, and the expenses of such board of health or health officer shall be a charge against the incorporated city or town for which such appointment shall be made: and when the appointment is made for unincorporated towns, the expenses of the board of health or health officer is a charge against the county. En. Stats. 1889, 43.

CHAPTER III.

REGISTRY OF BIRTHS, MARRIAGES, AND DEATHS.

§ 3074. Registry of marriages.
§ 3075. Registry of births.
§ 3076. Registry of deaths.
§ 3077. Reports to recorder.
§ 3078. Same.
§ 3079. Duties of recorder.
§ 3080. Report to secretary of state board of health.
§ 3081. Fees.
§ 3082. Penalties.
§ 3083. Printing and distribution of forms of register.
§ 3084. Permit for burial.

§ 3074. Registry of marriages. All persons who perform the marriage ceremony must keep a registry of the time of each marriage so celebrated, the residence, the names in full, the place of birth, the age of each party, and whether either party has ever been before married. En. March 12, 1872. Am'd. 1877-8, 60.

§ 3075. Registry of births. All physicians and professional midwives must keep a registry of the time of each

birth at which they assist, professionally, the sex, race, and color of the child, and the names and residence of the parents. En. March 12, 1872.

Cal.Rep.Cit. 84, 309.

§ 3076. **Registry of deaths.** Physicians who attend deceased persons in their last sickness; clergymen who officiate at a funeral; coroners who hold inquests; sextons and undertakers who bury deceased persons; must each keep a registry of the name, age, residence, and time of death of such person. En. March 12, 1872. Am'd. 1873-4, 42.

§ 3077. **Reports to recorder.** All persons registering marriages, births, or deaths, must quarterly file with the county recorder a certified copy of their register. All such certificates must specify, as near as may be ascertained, the name in full, age, occupation, term of residence in the city or county, birthplace, condition, whether single or married, widow or widower, sex, race, color, last place of residence, and cause of death of all decedents. En. March 12, 1872. Am'd. 1877-8, 60.

Cal.Rep.Cit. 84, 309.

§ 3078. **Same.** If at any birth no physician or midwife attends, the parents must make the report. En. March 12, 1872.

§ 3079. **Duties of recorder.** The recorder must keep separate registers, to be known as the "Register of Marriages," the "Register of Birth," and the "Register of Deaths," in which the marriages, births, and deaths certified to him must be numbered in the order in which they are reported to him. There must be stated in each register, in separate columns, properly headed, the various facts contained in the certificates, and the name and official or clerical position of the person making the report. The recorder must carefully examine each report, and register the same marriage, birth, or death but once, although it may be reported by different persons. En. March 12, 1872. Am'd. 1877-8, 60.

§ 3080. **Report to secretary of state board of health.** The county recorder must every three months transmit to the secretary of the state board of health, at Sacramento City, a certified abstract of the registers of births, mar-

riages, and deaths, prepared in the manner prescribed in the instructions of the secretary, and upon blanks to be furnished by him for that purpose. En. March 12, 1872.

§ 3081. Fees. County recorders, in those counties where their compensation is by fees, shall be allowed by the board of supervisors a fee of not exceeding ten cents for each name reported, to be paid out of the general fund of the county; and in those counties where their compensation is by a fixed salary the duties in this chapter provided shall be performed without compensation other than such salary. En. March 12, 1872. Am'd. 1877-8, 60. 1905 103

§ 3082. Penalties. Any person on whom a duty is imposed by this chapter, who fails, neglects, or refuses to perform the same as herein required, is liable to a penalty of fifty dollars, to be recovered by the district attorney of the proper county for the use of the general fund of such county. En. March 12, 1872. 1905 103

§ 3083. Printing and distribution of forms of register. The secretary of the state board of health must prepare blank forms of said registers for the state printer, who must print as many copies as the said secretary shall direct and deliver the same to the secretary of state, who shall forward the same, from time to time, and in such numbers as shall be directed by the secretary first mentioned, to the county recorders of the several counties, who must carefully keep and distribute the same to the persons in the county who are required to keep the registers and make the reports provided in this chapter. En. Stats. 1877-8, 61. 1905 103

§ 3084. Permit for burial. No person shall inter, cremate, or otherwise dispose of any human body, in any city, county, or city and county, without having first obtained a permit therefor. In incorporated cities, or counties, or cities and counties, the permit must be obtained from the person authorized to grant the same by any law, ordinance, or resolution, passed for that purpose. But in the absence of such law, ordinance, or resolution, the permit must be obtained from either the coroner, or health officer, board of health, or if the coroner be absent, then from the health officer or board of health; and if there be no board of health or health officer, then from

a justice of the peace. The person applying for a permit must produce and file with the officer issuing the permit a certificate signed by a physician, or a coroner, or two reputable citizens, setting forth as near as possible, the name, age, color, place of birth, occupation, date, locality, and cause of death of deceased. And no permit shall be granted without the production of such certificate. Such permit must be filed with the county recorder, and the person so filing is entitled to the compensation provided for in section three thousand and seventy-seven of this code, but if any other registration of the death of the deceased shall have been made, the recorder must record the name but once. En. Stats. 1885, 55. Am'd. 1889, 36.

Cal.Rep.Cit. 84, 306; 84, 309; 84, 310.

CHAPTER IV.

DISSECTION.

§ 3093. Physicians, etc., may obtain dead bodies.
§ 3094. Bodies required to be buried at public expense.
§ 3095. Physicians to give certificate from medical society.

§ 3093. Physicians, etc., may obtain dead bodies. Any physician or surgeon of this state, or any medical student under the authority of any such physician or surgeon, may obtain, as hereinafter provided, and have in his possession human dead bodies, or the parts thereof, for the purposes of anatomical inquiry or instruction. En. March 12, 1872.

Removing body for dissection: Pen. Code, sec. 291.

Violation of burial and the remains of the dead: Pen. Code, secs. 290 et seq.

Disinterring body without permit: Stats. 1878, 1050; amended 1899, 139.

§ 3094. Bodies required to be buried at public expense. Any sheriff, coroner, keeper of a county poorhouse, public hospital, county jail, or state prison, or the mayor or board of supervisors of the city of San Francisco, must surrender the dead bodies of such persons as are required to be buried at the public expense to any physician or surgeon, to be by him used for the advancement of anatomical science, preference being always given to medical schools by law established in this state, for their use in the

instruction of medical students. But if such deceased person during his last sickness requested to be buried, or if within twenty-four hours after his death some person claiming to be of kindred or a friend of the deceased requires the body to be buried, or if such deceased person was a stranger or traveler who suddenly died before making himself known, such dead body must be buried without dissection. En. March 12, 1872.

§ 3095. Physicians to give certificate from medical society. Every physician or surgeon, before receiving a dead body, must give to the board or officer surrendering the same to him a certificate from the medical society of the county in which he resides, or if there is none, from the board of supervisors of the same, that he is a fit person to receive such dead body. He must also give a bond, with two sureties, that each body so by him received will be used only for the promotion of anatomical science, and that it will be used for such purpose within this state only, and so as in no event to outrage the public feeling. En. March 12, 1872.

CHAPTER V.

CEMETERIES AND SEPULTURE.

§ 3105. Title to cemetery grounds.
§ 3106. What constitutes a cemetery.
§ 3107. Cemeteries, how laid out and dedicated.
§ 3108. Inhabitants of city, etc., to own cemetery.
§ 3109. Public cemeteries, under whose control.
§ 3110. Regulations, sextons, etc.
§ 3111. Register must be kept.

§ 3105. Title to cemetery grounds. The title to lands used as a public cemetery or graveyard, situated in or near to any city, town, or village, and used by the inhabitants thereof continuously, without interruption, as a burial ground for five years, is vested in the inhabitants of such city, town, or village, and the lands must not be used for any other purpose than a public cemetery. En. March 12, 1872.

Cal.Rep.Cit. 98, 437; 98, 438.

Sepulture and the remains of the dead, violating: See Pen. Code, secs. 290-297.

Act relating to exhumation: See General Laws, title Cemeteries.

§ 3106. What constitutes a cemetery. Six or more human bodies being buried at one place constitutes the place a cemetery. En. March 12, 1872.

Cal.Rep.Cit. 98, 438.

§ 3107. Cemeteries, how laid out and dedicated. Incorporated cities or towns, and for unincorporated towns or villages, the supervisors of the county may survey, lay out, and dedicate of the public lands situated in or near such city, town, or village, not exceeding five acres, for cemetery and burial purposes. The survey and description thereof, together with a certified copy of the order made constituting the same a cemetery, must be recorded in the recorder's office of the county in which the same is located. En. March 12, 1872.

§ 3108. Inhabitants of city, etc., to own cemetery. The inhabitants of any city, town, village, or neighborhood may by subscription or otherwise purchase or receive by gift or donation, lands not exceeding five acres, to be used as a cemetery, the title thereof to be vested in such inhabitants, and when once dedicated to use for burial purposes must thereafter be used for no other purpose. En. March 12, 1872.

§ 3109. Public cemeteries, under whose control. The public cemeteries of cities, towns, villages, or neighborhoods must be inclosed and laid off into lots, and the general management, conduct, and regulation of interments, permits to inter, or remove interred bodies, the disposition of lots, and keeping the same in order, is under the jurisdiction and control of the cities and towns owning the same, if incorporated; if not, then under the jurisdiction and control of the board of supervisors of the county in which they are situated. En. March 12, 1872.

§ 3110. Regulations, sextons, etc. The board of supervisors, city trustees, or other corresponding authorities having jurisdiction and control of cemeteries, may make general rules and regulations therefor, and appoint sextons or other officers to enforce obedience to the same, with such other powers and duties regarding the cemetery as they may deem necessary. En. March 12, 1872.

§ 3111. Register must be kept. The authority having control of a public cemetery must require a register of

name, age, birthplace, and date of death and burial of every body interred therein, to be kept by the sexton or other officer, open to public inspection. En. March 12, 1872.

CHAPTER VI.

LOST AND UNCLAIMED PROPERTY.

Article I. Lost Money and Goods, §§ 3136-3142.
II. Unclaimed Property, §§ 3152-3157.

ARTICLE I.

LOST MONEY AND GOODS.

§ 3136. Duty of persons finding lost money, etc.
§ 3137. Appraisers, appointment and duty of.
§ 3138. List of appraisers. Finder to advertise.
§ 3139. Proceedings, if no owner appear within six months.
§ 3140. Finder to restore property. Owner may sue.
§ 3141. Finder, failing to make discovery, penalty.
§ 3142. Proof, how made.

§ 3136. Duty of persons finding lost money, etc. If any person find any money, goods, things in action, or other personal property, or shall save any domestic animal from drowning or from starvation, when such property shall be of the value of ten dollars or more, he must inform the owner thereof, if known, and make restitution without compensation, further than a reasonable charge for saving and taking care thereof; but if the owner is not known to the party saving or finding such property, he must, within five days, make an affidavit before some justice of the peace of the county, stating when and where he found or saved such property, particularly describing it; and if the property was saved, particularly stating from what and how he saved the same, stating therein whether the owner of the property is known to him, and that he has not secreted, withheld, or disposed of any part of such property. En. March 12, 1872. Am'd. 1873-4, 42.

Finder, rights, duties, and liabilities of: See Civ. Code, secs. 1864-1872.

Wrecks and wrecked property: Ante, secs. 2403-2418.

Lost property, larceny of: See Pen. Code, sec. 485.

§ 3137. Appraisers, appointment and duty of. The justice must then summon three disinterested householders to appraise the same. The appraisers, or any two of

them, must make two lists of the valuation and description of such property, and sign and make oath to the same, and deliver one of the lists to the finder; and the other to the justice of the peace. En. March 12, 1872.

§ 3138. List of appraisers. Finder to advertise. The justice must file such list, and the finder must transmit a copy of the same to the recorder of the county, who must record the same in a book known as the "Estray and Lost Property Book," within fifteen days, and the finder must at once set up at the courthouse door and four other public places in the township or city a copy of such valuation and description of property. En. March 12, 1872.

§ 3139. Proceedings, if no owner appear within six months. If no owner appears and proves the property within six months, and the value thereof does not exceed twenty dollars, the same vests in the finder; but if the value exceed twenty dollars, the finder must, within thirty days after setting up the list mentioned in the preceding section, cause a copy of the description to be inserted in some newspaper printed in the county, if there be one, and if not, in some newspaper printed in the state, for three weeks; and if no owner prove the property within one year after such publication it vests in the finder. En. March 12, 1872.

§ 3140. Finder to restore property. Owner may sue. If, within one year, an owner appears and proves the property and pays all reasonable charges, including fees of officers, the finder must restore the same to him. On failure to make restoration of such property, or the appraised value thereof, on being tendered such charges and fees, the owner may recover the same or the value thereof by civil action in any court having jurisdiction. En. March 12, 1872.

§ 3141. Finder, failing to make discovery, penalty. If any person find any money, property, or other valuable thing, and fail to make discovery of the same as required by this article, he forfeits to the owner double the value thereof. En. March 12, 1872.

Failing to make discovery is larceny: Pen. Code, sec. 485.

§ 3142. Proof, how made. The proof required by this article must be made before the clerk with whom the list provided for herein is filed, and if he is satisfied therefrom that the person claiming to be is the owner, he must certify that fact under his hand and the seal of the county court. En. March 12, 1872.

ARTICLE II.

UNCLAIMED PROPERTY.

§ 3152. Carriers, commission merchants, etc., may retain goods until charges paid.
§ 3153. Property unclaimed within sixty days, sale of.
§ 3154. Proceeds unclaimed, where to go.
§ 3155. Carrier's responsibility ceases, when.
§ 3156. Property upon which advances are made may be sold.
§ 3157. Fees of officers.

§ 3152. Carriers, commission merchants, etc., may retain goods until charges paid. When any goods, merchandise, or other property has been received by any railroad or express company, or other common carrier, commission merchants, innkeepers or warehousemen, for transportation or safe keeping, and are not delivered to the owner, consignee, or other authorized person, the carrier, commission merchant, innkeeper, or warehouseman, may hold or store the same with some responsible person until the freight and all just and reasonable charges are paid. En. March 12, 1872.

Cal.Rep.Cit. 94, 178.

Carrier, delivery and storage by: Civ. Code, secs. 2118-2121. Relief from liability: Civ. Code, secs. 2131, 2132. Lien for freightage: Civ. Code, sec. 2144.

§ 3153. Property unclaimed within sixty days, sale of. If no person calls for the property within sixty days from the receipt thereof, and pays freight and charges thereon, the carrier, commission merchant, innkeeper, or warehouseman may sell such property, or so much thereof as will pay freight and charges, to the highest bidder at public auction, having first caused such notice of sale to be given as is customary in sales of goods by auction at the place where said goods may be held or stored. If any surplus is left, after paying freight, storage, expenses of sale, and other reasonable charges, the same must be paid over to the owner of such property, upon demand

being made therefor at any time within sixty days after the sale. En. March 12, 1872. Am'd. 1903, 88.

§ 3154. **Proceeds unclaimed, where to go.** If the owner or his agent fails to demand such surplus within sixty days of the time of such sale, then it must be paid into the county treasury, subject to the order of the owner. En. March 12, 1872.

§ 3155. **Carrier's responsibility ceases, when.** After the storage of goods, merchandise, or property, as herein provided, the responsibility of the carrier ceases, nor is the person with whom the same is stored liable for any loss or damage on account thereof, unless the same results from his negligence or want of proper care. En. March 12, 1872.

§ 3156. **Property upon which advances are made may be sold.** When any commission merchant or warehouseman receives on consignment produce, merchandise, or other property, and makes advances thereon, either to the owner or for freight and charges, he may, if the same is not paid to him within sixty days from the date of such advances, cause the produce, merchandise, or property on which the advances were made, to be advertised and sold as provided herein. En. March 12, 1872.

§ 3157. **Fees of officers.** The fees of officers under this chapter are the same allowed for similar services in other cases provided in this code, to be paid by the taker up or finder, and recovered of the owner. En. March 12, 1872.

Cal.Rep.Cit. 94, 178.

CHAPTER VII.

MARKS AND BRANDS.

Article I. Marks and Brands, §§ 3167-3172.
II. Regulations Relating to Marks and Brands, §§ 3182-3188.
III. Trade Marks, §§ 3196-3201.

ARTICLE I.

MARKS AND BRANDS.

§ 3167. Owners of horses, cattle, etc., to keep a mark, etc.
§ 3168. To record brands. Fees.
§ 3169. Recorders' duties respecting recorded marks, etc.
§ 3170. Marks and brands not lawful unless recorded.
§ 3171. Certain marks not allowed.
§ 3172. Branding animals, at what age.

§ 3167. Owners of horses, cattle, etc., to keep a mark, etc. Owners of horses, mules, cattle, sheep, goats, or hogs running at large, must have a mark, brand, and counterbrand different from any one in use by any other person, so far as may be known. En. March 12, 1872.

Altering brands is state prison offense: Pen. Code, sec. 357.

Marks and brands in Siskiyou County, act concerning, continued in force by code: See ante, sec. 19, subd. 11.

§ 3168. To record brands. Fees. Every owner must record with the recorder of the county his mark, brand, and counterbrand by delivering to the recorder his mark, cut upon a piece of leather, and his brand and counterbrand burnt upon it, which shall be kept in the recorder's office. A certified copy thereof made by the recorder, with the seal of his office attached thereto, is evidence on the trial of any action in a court of competent jurisdiction as to the ownership of all animals legally marked or branded. The recorder must enter in a book to be kept by him for that purpose a copy of the marks, brands, and counterbrands; but he must first be satisfied that such brand and counterbrand tendered to him for record is unlike any other mark, brand, or counterbrand in the county, and, as far as his knowledge extends, is different from any other in the state. For recording the mark, brand, and counterbrand the recorder is entitled to demand and receive one dollar. En. March 12, 1872.

§ 3169. Recorders' duties respecting recorded marks, etc. Every recorder in this state must transmit to the recorders of the adjoining counties a transcript of all the marks, brands, and counterbrands recorded in his office, to be filed by such recorders in their offices, and reference thereto must be made in every case of application for the record of marks and brands. En. March 12, 1872.

§ 3170. Marks and brands not lawful unless recorded. No mark, brand, or counterbrand is lawful unless recorded as provided in this article, nor shall any person use more than one mark or brand, unless he is the owner of more than one ranch or farm. En. March 12, 1872.

§ 3171. Certain marks not allowed. No person must use a mark by cutting off the ear or by cutting the ear on both sides to a point. En. March 12, 1872.

§ 3172. Branding animals, at what age. Every person must mark or brand his horses and mules before they are eight months old, and cattle before they are twelve months old, on the hip or hinder part, and mark or brand his sheep, goats, and hogs, before they are six months old. On the trial of any action to recover the possession of any animal which is marked or branded, the mark or brand is prima facie evidence that the animal belongs to the owner of the mark or brand. When a dispute occurs in regard to a mark or brand, the person first recording the same is entitled thereto. En. March 12, 1872. Am'd. 1873-4, 43.

Prima facie evidence defined: Code Civ. Proc., sec. 1833.

ARTICLE II.

REGULATIONS RELATING TO MARKS AND BRANDS.

§ 3182. Regulations for selling cattle, etc.
§ 3183. Penalty for using more than one, or an unrecorded brand
§ 3184. Fraudulently mismarking stock.
§ 3185. Hides of slaughtered cattle to be kept.

§ 3182. Regulations for selling cattle, etc. Persons selling cattle, horses, mules, jacks, or jennies, must counterbrand them on the shoulders, or give a written descriptive bill of sale. En. March 12, 1872.

§ 3183. Penalty for using more than one, or an unrecorded brand. Any person who uses any mark, brand, or counterbrand other than the one recorded by him, except by the consent of the owner of such other mark, brand, or counterbrand, or uses more than one mark, brand, or counterbrand, otherwise than is provided in article I, or suffers his ward, child, apprentice, or servant to use any other than his own mark, brand, or counterbrand, on those of the stock they run with, forfeits to any person suing therefor the stock so marked or branded with any other than the proper mark or brand recorded by him. This section does not extend to any stock which may descend to any ward, child, apprentice, or servant by the gift or devise of any person other than the guardian, parent, or master, of such ward, child, apprentice, or servant; but the marks, brands, and counterbrands of such minors,

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apprentices, or servants, must be recorded as other marks, brands, and counterbrands. En. March 12, 1872.

§ 3184. Fraudulently mismarking stock. If any person has knowledge of any person, who, with the intent to defraud or willingly mismarks or misbrands any stock not his own, or kills any stock running at large having a proper owner, the person having such knowledge must, within ten days thereafter, give information thereof to some justice of the peace of the proper county. En. March 12, 1872.

Altering brands: Pen. Code, sec. 357.

§ 3185. Hides of slaughtered cattle to be kept. All persons slaughtering cattle must keep the hides with the ears attached for fifteen days; and all persons having such hides in their possession must exhibit the same for examination on demand being made by any person. En. March 12, 1872.

Cal.Rep.Cit. 73, 408; 73, 410.

ARTICLE III.

TRADE MARKS.

§ 3196. "Trade marks" defined.
§ 3197. Exclusive use of trade mark, how secured.
§ 3198. Record of trade marks.
§ 3199. Assignments. Injunctions.
§ 3200. Use of by labor union.
§ 3201. Infringement of trade mark used by trade union.

§ 3196. "Trade marks" defined. The phrase "trade mark" as used in this chapter includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description, and also any name or names, marks or devices, branded, stamped, engraved, etched, blown, or otherwise attached or produced upon any cask, keg, bottle, vessel, siphon, can, case, or other package, used by any mechanic, manufacturer, druggist, merchant or tradesman, to hold, contain or inclose the goods so imported, manufactured, produced, compounded or sold by him, other than any name, word

or expression generally denoting any goods to be of some particular class or description. En. March 12, 1872. Am'd. 1903, 80.

Cal.Rep.Cit. 68, 446.

§ 3197. Exclusive use of trade mark, how secured. Any person may record any trade mark or name by filing with the secretary of state his claim to the same, and a copy or description of such trade mark or name, with his affidavit attached thereto, certified to by any officer authorized to take acknowledgments of conveyances, setting forth that he (or the firm or corporation of which he is a member) is the exclusive owner, or agent of the owner, of such trade mark or name. En. March 12, 1872. Am'd. 1885, 94.

Cal.Rep.Cit. 66, 78; 102, 44.

§ 3198. Record of trade marks. The secretary of state must keep for public examination a record of all trade marks, or names filed in his office, with the date when filed and name of claimant; and must at the time of filing collect from such claimant a fee of three dollars in gold coin, to be paid into the state library fund. En. March 12, 1872.

§ 3199. Assignments. Injunctions. Any person who has first adopted and used a trade mark or name, whether within or beyond the limits of this state, is its original owner. Such ownership may be transferred in the same manner as personal property and is entitled to the same protection by suits at law; and any court of competent jurisdiction may restrain, by injunction, any use of trade marks, or names in violation of this chapter. En. March 12, 1872. Am'd. 1885, 94.

Cal.Rep.Cit. 66, 78; 102, 44.

§ 3200. Use of by labor union. Any trade union, labor association, or labor organization, organized and existing in this state, whether incorporated or not, may adopt and use a trade mark and affix the same to any goods made, produced or manufactured by the members of such trade union, labor association, or labor organization, or to the box, cask, case, or package containing such goods, and may record such trade mark by filing or causing to be filed with the secretary of state its claim to the same,

and a copy or description of such trade mark, with the affidavit of the president of such trade union, labor association, or labor organization, certified to by any officer authorized to take acknowledgments of conveyances, setting forth that the trade union, labor association, or labor organization of which he is the president is the exclusive owner, or agent of the owner, of such trade mark; and all the provisions of article three, chapter seven, title seven, part three, of the Political Code, are hereby made applicable to such trade mark. En. Stats. 1887, 167.

§ 3201. Infringement of trade mark used by trade union. The president or other presiding officer of any trade union, labor association, or labor organization, organized and existing in this state, which shall have complied with the provisions of the preceding section, is hereby authorized and empowered to commence and prosecute in his own name any action or proceedings he may deem necessary for the protection of any trade mark adopted or in use under the provisions of the preceding section, or for the protection or enforcement of any rights or powers which may accrue to such trade union, labor association, or labor organization by the use or adoption of said trade mark. En. Stats. 1887, 168.

CHAPTER VIII.

WEIGHTS AND MEASURES.

§ 3209. The standard of weights and measures.
§ 3210. The unit of extension.
§ 3211. Division of the yard.
§ 3212. The rod, the mile, and the chain.
§ 3213. The acre.
§ 3214. The unit of weights.
§ 3215. Division of the pound.
§ 3216. Unit of liquid measures.
§ 3217. The barrel, the hogshead.
§ 3218. Unit of solid measure.
§ 3219. Division of the half-bushel.
§ 3220. Division of capacity for commodities.
§ 3221. Heap measure.
§ 3222. Contracts construed accordingly.
§ 3223. Weights of bushels of various products.

§ 3209. The standard of weights and measures. The standard weights and measures now in charge of the secretary of state being the same that were furnished to this state by the government of the United States, and con-

sisting of one standard yard measure; one set of standard weights, comprising one troy pound, and nine avoirdupois weights of one, two, three, four, five, ten, twenty, twenty-five, and fifty pounds, respectively; one set of standard troy ounce weights, divided decimally from ten ounces to the one ten-thousandths of an ounce; one set of standard liquid capacity measures, consisting of one wine gallon of two hundred and thirty-one cubic inches, one half-gallon, one quart, one pint, and one half-pint measure; and one standard half bushel, containing one thousand and seventy-five cubic inches and twenty-one hundredths of a cubic inch, according to the inch hereby adopted as the standard, are the standards of weights and measures throughout the state. En. March 12, 1872.

Sealers of weights and measures: Ante, secs. 561-567.

False weights and measures: Pen. Code, secs. 552-555.

§ 3210. **The unit of extension.** The standard yard is the unit or standard measure of length and surface from which all other measures of extension, whether lineal, superficial, or solid, are derived and ascertained. En. March 12, 1872.

§ 3211. **Division of the yard.** The yard is divided into three equal parts, called feet, and each foot into twelve equal parts, called inches; for measures of cloths and other commodities commonly sold by the yard, it may be divided into halves, quarters, eighths, and sixteenths. En. March 12, 1872.

§ 3212. **The rod, the mile, and the chain.** The rod, pole, or perch, contains five and a half yards, and the mile one thousand seven hundred and sixty yards; the chain for measuring land is twenty-two yards long, and divided into one hundred equal parts, called links. En. March 12, 1872.

§ 3213. **The acre.** The acre for land measure must be measured horizontally, and contains ten square chains, and is equivalent in area to a rectangle sixteen rods in length and ten in breadth; six hundred and forty acres being contained in a square mile. En. March 12, 1872.

§ 3214. **The unit of weights.** The standard avoirdupois and troy weights are the units or standards of weight from which all other weights are derived and ascertained. En. March 12, 1872.

§ 3215. **Division of the pound.** The avoirdupois pound, which bears to the troy pound the ratio of seven thousand

to five thousand seven hundred and sixty, is divided into sixteen equal parts, called ounces; the hundredweight consists of one hundred avoirdupois pounds, and twenty hundredweight constitute a ton. The troy ounce is equal to the twelfth part of the troy pound. En. March 12, 1872.

Cal.Rep.Cit. 109, 310; 120, 630.

§ 3216. Unit of liquid measures. The standard gallon and its parts are the units or standards of measure of capacity for liquids, from which all other measures of liquids are derived and ascertained. En. March 12, 1872.

§ 3217. The barrel, the hogshead. The barrel is equal to thirty-one and a half gallons, and two barrels constitute a hogshead. En. March 12, 1872.

§ 3218. Unit of solid measure. The standard half bushel is the unit or standard measure of capacity for substances other than liquids, from which all other measures of such substances are derived and ascertained. En. March 12, 1872.

§ 3219. Division of the half bushel. The peck, half peck, quarter peck, quart, and pint measures for measuring commodities other than liquid are derived from the half bushel by successively dividing that measure by two. En. March 12, 1872.

§ 3220. Division of capacity for commodities. The measures of capacity for coal, ashes, marl, manure, Indian corn in the ear, fruit, and roots of every kind, and for all other commodities commonly sold by heap measure, are the half bushel and its multiples and subdivisions; and the measures used to measure such commodities must be made cylindrical, with plane and even bottom, and must be of the following diameters from outside to outside: the bushel, nineteen and a half inches; half bushel, fifteen and a half inches, and the peck, twelve and a third inches. En. March 12, 1872.

§ 3221. Heap measure. All commodities sold by heap measure must be duly heaped up in the form of a cone; the outside of the measure, by which the same are measured, to be the limit of the base of the cone, and such cone to be as high as the article will admit. En. March 12, 1872.

§ 3222. Contracts construed accordingly. Contracts made within this state for work to be done, or for anything

to be sold or delivered by weight or measure, must be construed according to the foregoing standards. En. March 12, 1872.

Cal.Rep.Cit. 120, 630.

§ 3223. Weights of bushels of various products. Whenever wheat, rye, Indian corn, barley, buckwheat, or oats, are sold by the bushel, and no special agreement as to the weight or measurement is made by the parties, the bushel consists of sixty pounds of wheat, of fifty-four pounds of rye, of fifty-two pounds of Indian corn, of fifty pounds of barley, of forty pounds of buckwheat, and of thirty-two pounds of oats. En. March 12, 1872.

Cal.Rep.Cit. 47, 510.

CHAPTER IX.

LABOR AND MATERIAL ON PUBLIC BUILDINGS.

§ 3233. Labor must be done by day's work.
§ 3234. Material must be furnished by contract.
§ 3235. Product of Mongolian labor.

§ 3233. Labor must be done by day's work. All work done upon the public buildings of this state must be done under the supervision of a superintendent, or state officer or officers having charge of the work, and all labor employed on such buildings, whether skilled or unskilled, must be employed by the day, and no work upon any of such buildings must be done by contract. En. March 12, 1872.

Acts relating to public works: See General Laws, title Public Works.

§ 3234. Material must be furnished by contract. All materials to be used on any of the public buildings must be furnished by contract, in accordance with the plans and specifications and proposals therefor. En. March 12, 1872.

Cal.Rep.Cit. 47, 510.

See General Laws, title Public Works.

§ 3235. Product of Mongolian labor. No supplies of any kind or character, "for the benefit of the state, or to be paid for by any moneys appropriated or to be appropriated by the state," manufactured or grown in this state, which are in whole or in part the product of Mongolian labor, shall be purchased by the officials for the state having the control of any public institution under the control of the

state, or of any county, city and county, city, or town thereof. En. Stats. 1887, 171.

CHAPTER X.

HOURS OF LABOR.

§ 3244. Eight hours a day's work.
§ 3245. Same, on public works.
§ 3246. Twelve hours on street cars.
§ 3247. Recovery for labor over twelve hours daily.
§ 3247. Preference in purchase of supplies.
§ 3248. Form of complaint.
§ 3249. Provisions applicable to contracts to labor.
§ 3250. Hours of labor on street cars. Penalty for violation.

§ 3244. Eight hours a day's work. Eight hours of labor constitutes a day's work, unless it is otherwise expressly stipulated by the parties to a contract, except those contracts within the provisions of sections three thousand two hundred and forty-six, three thousand two hundred and forty-seven, and three thousand two hundred and forty-eight of this code. En. March 12, 1872. Am'd. 1887, 101.

§ 3245. Same, on public works. Eight hours' labor constitute a legal day's work in all cases where the same is performed under the authority of any law of this state, or under the direction, control, or by the authority of any officer of this state acting in his official capacity, or under the direction, control, or by the authority of any municipal corporation within this state, or of any officer thereof acting as such; and a stipulation to that effect must be made a part of all contracts to which the state or any municipal corporation therein is a party. En. March 12, 1872.

Cal.Rep.Cit. 47, 509; 98, 588; 98, 589; 98, 590; 98, 591.

Hours of labor: See General Laws, title Hours of Labor.

§ 3246. Twelve hours on street cars. Twelve hours' labor constitutes a day's work on the part of drivers and conductors, and gripmen of street cars for the carriage of passengers. Any contract for a greater number of hours' labor in one day shall be and is void, at the option of the employee, without regard to the terms of employment, whether the same be by the hour, day, week, month, or any other period of time, or by or according to the trip or trips that the car may, might, or can make between the termini of the route, or any less distance thereof. Any and every

person laboring over twelve hours in one day as driver, or conductor, or gripman, on any street railroad, shall receive from his employer thirty cents for each hour's labor over twelve hours in each day. En. Stats. 1887, 101.

§ 3247. Recovery for labor over twelve hours daily. In actions to recover the value or price of labor under section three thousand two hundred and forty-six of this code, the plaintiff may include in one action his claim for the number of days, and the number of hours' work over twelve hours in each day, performed by him for the defendant, and the court shall exclude all evidence of agreement to labor over twelve hours in one day for a less price than thirty cents, and the court shall exclude any receipt of payment for hours of labor over twelve hours in one day, unless it be established that at least thirty cents for each hour of labor over twelve hours in one day has been actually paid, and a partial payment shall not be deemed or considered a payment in full. En. Stats. 1887, 102.

§ 3247. Preference in purchase of supplies. Any person, committee, board, officer, or any other person charged with the purchase, or permitted or authorized to purchase supplies, goods, wares, merchandise, manufactures or produce, for the use of the state, or of any of its institutions or officers, or for the use of any county or consolidated city and county, or city, or town, shall always, price, fitness, and quality equal, prefer such supplies, goods, wares, merchandise, manufactures or produce as has been grown, manufactured, or produced in this state, and shall next prefer such as have been partially so manufactured, grown, or produced in this state. All state, county, city and county, city or town officers, all boards, commissions, or other persons charged with advertising for any such supplies shall state in their advertisement that such preferences will be made. In any such advertisement no bid shall be asked for any article of a specific brand or mark nor any patent apparatus or appliances, when such requirement would prevent proper competition on the part of dealers in other articles of equal value, utility, or merit. En. Stats. 1897, 208.

§ 3248. Form of complaint. In actions under section three thousand two hundred and forty-six of this code the complaint may be in the following form: Title of case

and venue. Plaintiff complains of defendant, and for cause of action states: That between (stating first and last dates) he worked for defendant as conductor, driver, or gripman, on defendant's street railroad in (stating place), for (stating number of days), at the agreed rate of (stating price) per day, week, or month, and for such labor defendant has paid plaintiff the sum of (stating sum due), due plaintiff from defendant for said labor. The plaintiff further states that during the said period of time he worked for defendant as such (conductor, driver, or gripman), on sundry days, and performed (stating number of hours) hours' work in excess of twelve hours in one day, for which there is due plaintiff from defendant the sum of (stating the sum due) and costs. Signed ———. En. Stats. 1887, 102.

§ 3249. Provisions applicable to contracts to labor. The provisions of sections three thousand two hundred and forty-seven and three thousand two hundred and forty-eight of this code are applicable to every contract to labor made by the persons named in section three thousand two hundred and forty-six. En. Stats. 1887, 102.

§ 3250. Hours of labor on street cars. Penalty for violation. No person shall be employed as conductor, or driver, or gripman, on any street railroad, for more than twelve hours in one day, except as in this act provided, and any corporation, or company, or owner, or agent, or superintendent, who knowingly employs any person in such capacity for more than twelve hours in one day, in violation of the terms of this act, shall forfeit the sum of fifty dollars as a penalty for such offense, to the use of the person prosecuting any action therefor, and any number of forfeits may be prosecuted in one action. En. Stats. 1887, 102.

CHAPTER XI.

TIME.

§ 3255. Time, how computed.
§ 3256. Leap year.
§ 3257. The year and its parts.
§ 3258. The week.
§ 3259. The day.
§ 3260. "Day-time," and "night-time" defined.

§ 3255. Time, how computed. Time is computed according to the Gregorian or new style; and the first day of

January in every year passed since seventeen hundred and fifty-two, or to come, must be reckoned as the first day of the year. En. March 12, 1872.

§ 3256. **Leap year.** The several years one thousand nine hundred, two thousand one hundred, two thousand two hundred, two thousand three hundred, or any other future hundredth year, of which the year two thousand is the first, except only every fourth hundredth year, are not leap years, but common years of three hundred and sixty-five days; and the years two thousand, two thousand four hundred, two thousand eight hundred, and every other fourth hundredth year from the year two thousand, inclusive, and also every fourth year, except as above mentioned, which, by usage, in this state is considered a leap year, is a leap year consisting of three hundred and sixty-six days. En. March 12, 1872.

§ 3257. **The year and its parts.** The term "year" means a period of three hundred and sixty-five days; a half year, one hundred and eighty-two days; a quarter of a year, ninety-one days, and the added day of a leap year, and the day immediately preceding, if they occur in any such period, must be reckoned together as one day. En. March 12, 1872.

Fiscal year, act providing for change of: See act approved March 26, 1895; Stats. 1895, p. 128.

§ 3258. **The week.** A week consists of seven consecutive days. En. March 12, 1872.

Cal.Rep.Cit. 58, 238; 121, 527.

§ 3259. **The day.** A day is the period of time between any midnight and the midnight following. En. March 12, 1872.

Cal.Rep.Cit. 57, 332; 89, 470; 104, 522.

§ 3260. **"Day-time," and "night-time" defined.** "Day-time" is the period of time between "sunrise" and "sunset," and "night-time" is the period of time between "sunset" and "sunrise." En. March 12, 1872.

CHAPTER XII.

MONEY OF ACCOUNT.

§ 3272. Money of account.
§ 3273. Limitation on preceding section.
§ 3274. Amount, how stated in judgments, etc.

§ 3272. Money of account. The money of account of this state is the dollar, cent, and mill. Public accounts and all proceedings in courts must be kept and had in conformity to this regulation. En. March 12, 1872.

§ 3273. Limitation on preceding section. The provisions of the preceding section do not vitiate or affect any account, charge, or entry originally made, or any note, bond, or other instrument, expressed in any other money of account; but the same must be reduced to dollars, or parts of dollars, in any suit thereupon. En. March 12, 1872.

§ 3274. Amount, how stated in judgments, etc. In judgments and executions the amount thereof must be computed and stated as near as may be in dollars and cents, rejecting fractions. En. March 12, 1872.

CHAPTER XIII.

AUCTIONS.

Article I. Auctioneers, §§ 3284-3292.
II. Regulations Respecting Sales, §§ 3302-3310.
III. Frauds and Penalties, §§ 3322-3324.

ARTICLE I.

AUCTIONEERS.

§ 3284. Who may become auctioneers, and how.
§ 3285. The bond, sureties, approval, and filing.
§ 3286. Government goods are exempt.
§ 3287. Original application, how classified.
§ 3288. Renewal of license.
§ 3289. Renewal, for how long; exceeding class by sales.
§ 3290. Not to transfer license.
§ 3291. Auctioneers ex-officio.
§ 3292. Assistant, who may act and when.

§ 3284. Who may become auctioneers, and how. Any citizen of this state may become an auctioneer for the county in which he resides, and is authorized to sell real and personal property at public auction, on giving a bond in accordance with the provisions of this article for the faithful performance of his duties, and on the payment of the license therefor. En. March 12, 1872.

Auctioneer, authority of: See Civ. Code, secs. 2362, 2363. Illegally acting as, is misdemeanor: Pen. Code, sec. 436.

Sale by auction: Civ. Code, secs. 1792-1798. Of delinquent stock: Civ. Code, secs. 341 et seq. Of pledged prop-

erty: Civ. Code, sec. 3005. Mock auctions, punishment and forfeiture of license for: Pen. Code, sec. 535.

§ 3285. The bond, sureties, approval, and filing. The bond must be conditioned to be paid to the people of the state of California, with one or more sureties, in the sum of five thousand dollars, and approved by the judge of the superior court of the county in which the auctioneer proposes to do business, and must be filed in the office of the county clerk of the county. En. March 12, 1872. Am'd. 1880, 23.

§ 3286. Government goods are exempt. No auctioneers' license is required for the selling of any goods at public sale belonging to the United States, or to this state, or for the sale of property by virtue of any process issued by any state or federal court. En. March 12, 1872.

§ 3287. Original application, how classified. Every original application for auctioneers' license must be accompanied with a verified statement of the amount of sales proposed to be made monthly, and the license charge must be for the first quarter classified thereby. En. March 12, 1872.

Carrying on business without a license is misdemeanor: Pen. Code, sec. 435.

Amount of license for various classes of auctioneers: Post, sec. 3376.

§ 3288. Renewal of license. Every auctioneer applying to the tax collector for a renewal of his license must accompany the application with a statement, under oath, setting forth that his average receipts per month on account of sales during the preceding quarter did not exceed the amount specified in the class of license for which he applies. The tax collector must provide blank forms of affidavit for that purpose, and administer the oath required to such applicants without charge. En. March 12, 1872.

§ 3289. Renewal, for how long; exceeding class by sales. After the first quarter licenses may be issued for the class fixed for a term not exceeding one year, at the option of the auctioneer. No auctioneer must exceed the amount of sales of the class in which his license is fixed. For every violation of this section, in addition to the criminal

penalty, the auctioneer forfeits two hundred and fifty dollars. En. March 12, 1872.

Penalties, recovery and disposition of: See post, sec. 3323.

§ 3290. Not to transfer license. No auctioneer is permitted to transfer his license to any other person for any part of the time for which his license is issued; nor is any auctioneer permitted to use his license for the purpose of transacting an auction business in more than one store or specified place of business. En. March 12, 1872.

More than one place: See post, sec. 3302.

§ 3291. Auctioneers ex-officio. In any city or town where there is no auctioneer, the sheriff or a constable thereof is ex-officio auctioneer, and is permitted to sell any property, real or personal, at public auction; and for any delinquency as such ex-officio auctioneer he is liable on his official bond. En. March 12, 1872.

§ 3292. Assistant, who may act and when. Every auctioneer, in case of inability to attend an auction by reason of sickness, or the performance of any duty imposed upon him by law, or during a temporary absence from the city or county within which he is auctioneer, may employ a copartner or clerk to hold such auction in his name and behalf, such employee to take and file with the clerk of the county an affidavit faithfully to perform the duties of auctioneer. But any auctioneer may employ a crier at any sale, for whose acts he shall be responsible. En. March 12, 1872. Am'd. 1873-4, 136.

ARTICLE II.

REGULATIONS RESPECTING SALES.

§ 3302. Auctioneers to designate places of business.
§ 3303. To sell at no other place.
§ 3304. Power of city authorities.
§ 3305. Book for live stock.
§ 3306. Book of sales.
§ 3307. Advertisement of auction sales in San Francisco.
§ 3308. Evening sales in San Francisco and Sacramento.
§ 3309. Commissions, and penalty of overcharge.
§ 3310. Quarterly report of sales.

§ 3302. Auctioneers to designate places of business. No auctioneer in any city of this state must have at one

time more than one place for holding auction; and every such auctioneer, before acting as such, must file with the clerk of the county in which such city is situated a writing signed by him designating such place, and naming therein the partners, if any, engaged with him in business. En. March 12, 1872.

§ 3303. **To sell at no other place.** No auctioneer must expose to sale any articles at any other place than that so designated, except goods sold in original packages as imported, household furniture, and such bulky articles as have usually been sold in warehouses, or in the public streets, or on the wharves. En. March 12, 1872.

§ 3304. **Power of city authorities.** The common council or other corresponding authority of each city may designate such place or places therein for the sale by auction of horses, carriages, and household furniture, as they deem expedient. En. March 12, 1872.

§ 3305. **Book for live stock.** Every auctioneer who sells any animal of the horse kind, or any mules, must keep a book, in which he must register the name of each and every person bringing or offering any horse or mule to be sold, and the name of the person purchasing such horse or mule, together with the date of such sale, and a description of each horse or mule sold, together with the marks and brands. The book is a public record, subject to the inspection of any person desiring to inspect the same. En. March 12, 1872.

§ 3306. **Book of sales.** Each auctioneer must keep a book, in which he must enter all sales, showing the name of the owner of the goods sold, to whom sold, and the amount paid, and the date of each sale, which book must at all times be open for the inspection of any person interested therein. En. March 12, 1872.

§ 3307. **Advertisement of auction sales in San Francisco.** Every auctioneer in the city of San Francisco must, under his own name, give previous notice in one or more of the public newspapers printed in that city of every auction sale made by him; and in case he is connected with any person or firm, his name must in all cases pre-

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cede, separately and individually, the name of such person or the title of the firm. En. March 12, 1872.

§ 3308. Evening sales in San Francisco and Sacramento. All sales of goods by public auction in the cities of San Francisco and Sacramento must be made in the day-time, between sunrise and sunset, excepting:

1. Books, prints, or paintings;

2. Goods sold in the original package as imported, according to a printed catalogue, of which samples must have been opened and exposed to public inspection at least one day previous to the sale. En. March 12, 1872.

§ 3309. Commissions, and penalty of overcharge. No auctioneer must demand or receive a higher compensation for his services than a commission of one per cent on the amount of any sales, public or private, made by him, unless by virtue of a previous agreement in writing between him and the owner or consignee. Every auctioneer who violates this section, in addition to the criminal penalty, forfeits to the party aggrieved two hundred and fifty dollars, and must refund the excess of charge. En. March 12, 1872.

§ 3310. Quarterly report of sales. Every auctioneer must quarterly make to the county auditor a report, under oath, showing:

1. The aggregate amount of auction sales made by him for the preceding quarter, designating the months and the amount for each month;

2. The days of each month on which auction sales were made, and the character of property sold by him during each month;

3. The amount of all private sales made, and the day on which they were made;

4. A statement of any partner, clerk, or other employee connected with him in his business, and what sales, if any, have been conducted by them, and why; and

5. The particular place where his business is conducted. En. March 12, 1872.

False report or neglect to make any report, penalty for: Post, sec. 3322.

ARTICLE III.

FRAUDS AND PENALTIES.

§ 3322. Penalty for not reporting, or reporting falsely.
§ 3323. Penalties, how recovered, and for what.
§ 3324. Action on bond.

§ 3322. Penalty for not reporting, or reporting falsely. For every false report made, and for every neglect to make the report required in the preceding article, the auctioneer thereby forfeits the sum of two hundred and fifty dollars, to be recovered on his bond. En. March 12, 1872.

Penal provisions concerning auctions: See Pen. Code, secs. 436, 535.

§ 3323. Penalties, how recovered, and for what. The penalties imposed by the provisions of this chapter, not otherwise appropriated, must be prosecuted for by the district attorney of the proper county, the moneys recovered to be paid to the county treasurer for the use of the general fund of the county. En. March 12, 1872.

§ 3324. Action on bond. Any one aggrieved or damaged by any act of an auctioneer, in violation of or contrary to the provisions of this chapter, has an action against him and his bondsmen on his official bond therefor. En. March 12, 1872.

CHAPTER XIV.

FIRES AND FIREMEN.

§ 3335. Fire companies, how organized.
§ 3336. To elect officers and adopt by-laws.
§ 3337. Firemen, what exempt from.
§ 3338. Exempt certificate, by and to whom issued.
§ 3339. County clerk may issue exempt certificates, when.
§ 3340. Seal of department, who to use and keep.
§ 3341. Record and certificate of exemption.
§ 3342. Duties of chief of fire department.
§ 3343. Chief to attend fires and preserve property.
§ 3344. Setting woods on fire.
§ 3345. Extinguishing fire in woods.

§ 3335. Fire companies, how organized. Fire companies in incorporated cities and towns are formed and organized under special laws, or under authority conferred upon the city or town government. Those in incorporated towns and villages are organized by filing, with the recorder of

the county in which they are located, a certificate in writing, signed by the foreman or presiding officer and secretary, setting forth the date of the organization, name, officers, and roll of active and honorary members, which certificate and filing must be renewed every six months. There shall not be allowed to any such cities, towns, or villages, more than one company for each one thousand inhabitants, but one company shall be allowed in any city, town, or village where the population is less than one thousand. There shall not be allowed to any engine company more than sixty-five certificate members, to any hook and ladder company more than sixty-five certificate members, to any hose company more than twenty-five certificate members. En. March 12, 1872. Am'd. 1877-8, 61.

Cal.Rep.Cit. 100, 263.

Fire department and commissioners in unincorporated towns and villages, act providing for: See post, Appendix, title Fire Department.

Yearly vacations to members: See post, Appendix, title Fire Department.

Premiums by foreign insurance companies for benefit of disabled firemen: See post, Appendix, title Fire Department.

Pensions for disabled firemen: See post, Appendix, title Fire Department.

Exempt firemen's fund and act for, enrollment of exempt firemen: See post, Appendix, title Fire Department.

Act relating to increasing efficiency of department in certain cities: See post, Appendix, title Fire Department.

§ 3336. To elect officers and adopt by-laws. Every such fire company must chose or elect a foreman, who is the presiding officer, and a secretary and treasurer, and may establish and adopt by-laws and regulations, and impose penalties, not exceeding five dollars or expulsion for each offense. En. March 12, 1872.

Cal.Rep.Cit. 100, 263.

§ 3337. Firemen, what exempt from. The officers and members of unpaid fire companies regularly organized, and exempt firemen, are entitled to the following privileges and exemptions, viz.: Exemption from payment of poll tax, road tax, and head tax of every description; exemption

from jury duty; exemption from military duty, except in case of war, invasion or insurrection. En. March 12, 1872. Am'd. 1877-8, 62.

Cal.Rep.Cit. 123, 499.

§ 3338. Exempt certificate, by and to whom issued. Every fireman who has served five years in an organized fire company in this state is an "exempt fireman," and must receive from the chief engineer of the department to which he belongs a certificate to that effect. Every active fireman must have a certificate of that fact, signed by the chief of the fire department or the foreman of the company to which he belongs; such certificates must be countersigned by the secretary, and over the seal of the company, if one is provided. Either certificate entitles the holder to exemption from military and jury duty. En. March 12, 1872.

Cal.Rep.Cit. 123, 499.

False certificate of exemption, issuance is misdemeanor: Pen. Code, sec. 649.

§ 3339. County clerk may issue exempt certificates, when. In lieu of issuing certificates to exempt firemen by the chief of the fire department, as provided in the last section, on the certificate of the foreman and secretary of any fire company, or the chief of the department, provision being made therefor in the by-laws of the company, "exempt certificates" may be issued by the clerk of the county, over his official seal and signature, which entitles the holder to like exemption from military and jury duty. En. March 12, 1872.

§ 3340. Seal of department, who to use and keep. Every fire department regularly organized may adopt a department seal, having upon it the arms of the state and the name of the particular fire department to which it belongs, which must be under the control of and for the use of the secretary, and be by him affixed to exempt certificates, certificates of active membership, and such other documents as the by-laws may provide. The secretary of every department having a seal must take the constitutional oath of office and give such bond as the by-laws provide for the faithful performance of his duties. En. March 12, 1872.

§ 3341. Record and certificate of exemption. The secretary of the fire department, or fire company, must keep a record of all certificates of exemption or active membership, the date thereof, and to whom issued; and when no seal is provided, similar entries of certificates issued to obtain county clerk's certificates. Every such certificate is prima facie evidence of the facts therein stated. En. March 12, 1872. Am'd. 1873-4, 43.

Prima facie evidence: See Code Civ. Proc., sec. 1833.

§ 3342. Duties of chief of fire department. The chief of every fire department must inquire into the cause of every fire occurring in the city or town of which he is the chief, and keep a record thereof; he must aid in the enforcement of all fire ordinances duly enacted, examine buildings in process of erection, report violations of ordinances relating to prevention or extinguishment of fires, and when directed by the proper authorities, institute prosecutions therefor, and perform such other duties as may be by proper authority imposed upon him. His compensation must be fixed and paid by the city or town authorities. En. March 12, 1872.

Cal.Rep.Cit. 100, 263.

Extinguishment of fires, disobeying orders for, or obstructing efforts for, etc., is misdemeanor: Pen. Code, sec. 385.

Compensation of officers in certain cities: See post, Appendix, title Fire Department.

§ 3343. Chief to attend fires and preserve property. Every chief of a fire department must attend all fires with his badge of office conspicuously displayed, must prevent injury to, take charge of, and preserve all property rescued from fires, and return the same to the owner thereof on the payment of the expenses incurred in saving and keeping the same, the amount thereof, when not agreed to, to be fixed by the police or county judge. En. March 12, 1872.

Cal.Rep.Cit. 100, 263.

Property rescued from fires, punishment for concealing: Pen. Code, sec. 500. Involuntary deposit of: Civ. Code, sec. 1815, subd. 2, sec. 1816.

§ 3344. Setting woods on fire. Every person negligently setting fire to his own woods, or negligently suffering any

fire to extend beyond his own land, is liable in treble damages to the party injured. En. March 12, 1872.

Cal.Rep.Cit. 90, 107; 90, 109; 98, 270.

Setting woods on fire is misdemeanor: Pen. Code, sec. 384. Setting fire to forests on public lands, punishment for: Stats. 1872, p. 96.

§ 3345. **Extinguishing fire in woods.** Whenever the woods are on fire, any justice of the peace, constable, or road overseer of the township or district where the fire exists, may order as many of the inhabitants liable to road poll tax, residing in the vicinity, as may be deemed necessary, to repair to the place of the fire and assist in extinguishing or stopping it. En. March 12, 1872.

CHAPTER XV.

LICENSES.

Article I. General Provisions, §§ 3356-3366.
II. Classification and Taxes, §§ 3376-3387.

ARTICLE I.

GENERAL PROVISIONS.

§ 3356. Licenses to be prepared and printed.
§ 3357. Auditor to number, sign and deliver.
§ 3358. Auditor to keep license accounts.
§ 3359. When license to be procured.
§ 3360. Suit against delinquent; damages.
§ 3361. Tax collectors; duties.
§ 3362. Proof on trials.
§ 3363. Settlements, when made.
§ 3364. Fees for licenses.
§ 3365. No section.
§ 3366. License tax, upon whom may be imposed.

§ 3356. **Licenses to be prepared and printed.** Each county auditor must prepare and have printed blank licenses of all classes mentioned in this chapter, for terms of three, six, and twelve months, and for such shorter terms as are herein authorized to be issued, with a blank receipt attached for the signature of the tax collector when sold. En. March 12, 1872.

Cal.Rep.Cit. 74, 24.

§ 3357. **Auditor to number, sign and deliver.** The county auditor must affix his official seal to, number, and sign all licenses, and from time to time deliver them to

the tax collector in such quantity as may be required, taking his receipt therefor, and charge him therewith, giving in the entry the numbers, classes, and amount thereof. En. March 12, 1872.

§ 3358. Auditor to keep license accounts. The auditor must keep in his office the stumps of all licenses by him delivered to the tax collector, and a ledger in which he must keep the collector's account for all licenses delivered to him, sold or returned unsold by him. A correct statement of the collector's license account must be certified to the county treasurer each month by the auditor. En. March 12, 1872.

§ 3359. When license to be procured. A license must be procured immediately before the commencement of any business or occupation liable to a license tax from the tax collector of the county where the applicant desires to transact the same, which license authorizes the party obtaining the same in his town, city, or particular locality in the county to transact the business described in such license; separate licenses must be obtained for each branch establishment or separate house of business located in the same county. No license issued under this chapter authorizes any person to carry on any business within the limits of any incorporated city or town having power by its charter to impose or levy city or town license taxes, unless such person, in addition to the license provided by this chapter, also procures the license required by the ordinances or orders of such city or town. En. March 12, 1872.

Cal.Rep.Cit. 60, 155; 60, 156.

Licenses: See General Laws, title Licenses.

Liquor license: Post, sec. 3381.

§ 3360. Suit against delinquent; damages. Against any person required to take out a license who fails, neglects, or refuses to take out such license, or who carries on or attempts to carry on business without such license, the collector may direct suit in the name of the people of the state of California as plaintiff, to be brought for the recovery of the license tax; and in such case either the collector or attorney may make the necessary affidavit for and a writ of attachment may issue without any bonds

being given on behalf of the plaintiff; and in case of recovery by the plaintiff, fifteen dollars damages must be added to the judgment and costs to be collected from the defendant, and when collected five dollars thereof must be paid to the collector, and ten dollars to the attorney prosecuting the suit. En. March 12, 1872.

Cal.Rep.Cit. 60, 154; 60, 156; 71, 468; 73, 368; 86, 256; 100, 270; 120, 304.

Carrying on business without a license is misdemeanor: Pen. Code, sec. 435.

§ 3361. **Tax collectors; duties.** Each tax collector must make diligent inquiry as to all persons in his county liable to pay license as provided in this chapter, and must require each person to state, under oath or affirmation, the probable amount of business which he or the firm of which he is a member, or for which he is an agent or attorney, or the association or corporation of which he is president, secretary, or managing agent, will do in the next succeeding three months; and thereupon, such person, agent, president, secretary, or other officer must procure a license from the tax collector for the term desired, and the class for which such party is liable to pay; and in all cases where an underestimate has been made by the party applying, the party making such underestimate, or the company he represented, are required to pay for a license for the next quarter double the sum otherwise required. En. March 12, 1872.

Cal.Rep.Cit. 120, 304.

§ 3362. **Proof on trials.** Upon the trial of any action authorized by this chapter, the defendant is deemed not to have procured the proper license unless he either produces it or proves that he did procure it; but he may plead in bar of the action a recovery against him and the payment by him in a civil action of the proper license tax, together with the damages and costs. En. March 12, 1872.

Cal.Rep.Cit. 120, 304.

§ 3363. **Settlements, when made.** On the first Monday in each month the collector must return to the auditor all licenses, unsold, and be credited therewith, and must, with the auditor, appear at the treasurer's office and pay into the county treasury, for the use of the county general fund, all moneys collected for licenses sold during the preceding

month, take the treasurer's receipt therefor, and file duplicates thereof with the auditor. The auditor must credit the collector, and charge the treasurer therewith. En. March 12, 1872.

Cal.Rep.Cit. 53, 572; 84, 74; 120, 305.

§ 3364. Fees for licenses. For each license issued, the collector must collect a fee of one dollar, which must be paid into the salary fund of the county, unless the auditor and collector are paid by fees instead of salaries, in which case the dollar must be equally divided between them; provided, that in the county of Sierra the fees so collected shall belong to the collector. En. March 12, 1872. Am'd. 1873-4, 43; 1873-4, 137.

§ 3365. [No section of this number.]

§ 3366. License tax, upon whom may be imposed. Boards of supervisors of the counties of the state, and the legislative bodies of the incorporated cities and towns therein, shall, in the exercise of their police powers, and for the purpose of regulation, as herein provided, and not otherwise, have power to license all and every kind of business not prohibited by law, and transacted and carried on within the limits of their respective jurisdictions, and all shows, exhibitions, and lawful games carried on therein, to fix the rates of license tax upon the same, and to provide for the collection of the same by suit or otherwise; provided, that every honorably discharged soldier, sailor, or marine of the United States, who is unable to obtain a livelihood by manual labor, shall have the right to hawk, peddle, and vend any goods, wares or merchandise, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license tax or fee whatsoever, whether municipal, county or state, and the board of supervisors or legislative body shall issue to such soldier, sailor or marine, without cost, a license therefor; provided, however, no license can be collected, or any penalty for the non-payment thereof enforced against any commercial traveler whose business is limited to the goods, wares, and merchandise sold or dealt in in this state at wholesale. En. Stats. 1901, 635.

Cal.Rep.Cit. 134, 146; 134, 149; 134, 150; 137, 588; 137, 590; 137, 659.

ARTICLE II.

CLASSIFICATION AND TAXES.

§ 3376. Classification and license tax.
§ 3377. Bankers, express companies and carriers. (Repealed.)
§ 3378. Bridge, ferry, wharf, chute, or pier license.
§ 3379. Brokers, trust companies, and others.
§ 3380. Different kinds of licenses.
§ 3381. Retail liquor licenses.
§ 3382. Merchants' license.
§ 3383. Exception in using liquors.
§ 3384. Peddlers' and hawkers' license.
§ 3385. Animals kept for propagation to be licensed.
§ 3386. Certain exhibitions, etc., exempted.
§ 3387. Present incumbents must collect licenses.

§ 3376. Classification and license tax. Auctioneers are divided into eight classes, and must obtain licenses from the tax collector as follows:

1. Those whose average monthly sales amount to one hundred thousand dollars and upwards constitute the first class, and must pay a license of four hundred dollars per quarter;

2. Those whose average monthly sales amount to seventy-five thousand dollars, and less than one hundred thousand dollars, constitute the second class, and must pay a license tax of three hundred dollars per quarter;

3. Those whose average monthly sales amount to fifty thousand dollars, and less than seventy-five thousand dollars, constitute the third class, and must pay a license tax of two hundred dollars per quarter;

4. Those whose average monthly sales amount to thirty thousand dollars, and less than fifty thousand dollars, constitute the fourth class, and must pay a license tax of one hundred and twenty-five dollars per quarter;

5. Those whose average monthly sales amount to twenty thousand dollars, and less than thirty thousand dollars, constitute the fifth class, and must pay a license tax of one hundred dollars per quarter;

6. Those whose average monthly sales amount to ten thousand dollars, and less than twenty thousand dollars, constitute the sixth class, and must pay a license tax of sixty dollars per quarter;

7. Those whose average monthly sales amount to twenty-five hundred and less than ten thousand dollars constitute the seventh class, and must pay a license tax of twenty-five dollars per quarter;

8. Those whose average monthly sales are less than twenty-five hundred dollars constitute the eighth class, and must pay a license tax of seven dollars and a half per quarter. En. March 12, 1872.

Auctions and auctioneers: Ante, secs. 3284-3324.

§ 3377. **Bankers, express companies and carriers.** (Repealed.) En. March 12, 1872. Repealed after the passage of this code by section fifty-three of the act of April 1, 1872, on file in the secretary of state's office. See note on page 504 of the original Political Code, or in Deering Code 1885, at page 492.

§ 3378. **Bridge, ferry, wharf, chute, or pier license.** Licenses to take tolls on bridges, ferries, wharves, chutes, or piers are fixed annually by the board of supervisors. The licenses therein provided for are issued by the county auditor, and must be obtained from the tax collector of the county. En. March 12, 1872.

Toll-bridges and ferries: See ante, secs. 2843-2895. Delinquent license tax, proceedings to collect: Stats. 1872, p. 539.

Wharves, chutes, and piers: Ante, secs. 2906-2921.

Omitting to procure license: Pen. Code, sec. 435.

§ 3379. **Brokers, trust companies, and others.** Persons engaged in banking, loaning money at interest, or in buying or selling notes, bonds, or other evidences of indebtedness of private persons; or in buying or selling state, county, or city stocks, or other evidences of state, county, or city indebtedness; or stocks, or notes, bonds, or other evidences of indebtedness of incorporated companies; or in buying or selling gold dust, gold or silver bullion, or gold or silver coin, are divided into six classes, and must pay licenses as follows:

1. Those doing business in the aggregate to the amount of two hundred and fifty thousand dollars per quarter and over, constitute the first class, and must pay a license of one hundred dollars per quarter;

2. Those doing business to the amount of two hundred thousand dollars, and less than two hundred and fifty thousand dollars per quarter, constitute the second class, and must pay a license of eighty dollars per quarter;

3. Those doing business to the amount of one hundred thousand dollars, and less than two hundred thousand

dollars per quarter, constitute the third class, and must pay a license of forty dollars per quarter;

4. Those doing business to the amount of fifty thousand dollars, and less than one hundred thousand dollars per quarter, constitute the fourth class, and must pay a license of twenty-five dollars per quarter;

5. Those doing business in any amount under fifty thousand dollars, and over five thousand dollars per quarter, constitute the fifth class, and must pay a license of fifteen dollars per quarter;

6. Those doing business in any amount under five thousand dollars per quarter, constitute the sixth class, and must pay a license of three dollars per quarter. En. March 12, 1872.

§ 3380. Different kinds of licenses. Licenses must be obtained for the purposes hereinafter named, for which the tax collector must require payment as follows:

First—From each proprietor of a billiard table not kept exclusively for family use, for each table five (5) dollars per quarter; and for a bowling alley, five (5) dollars per quarter for each alley; but no license must be granted for a term less than three months.

Two—Theaters are divided into two classes; those seating nine hundred and seventy-five or more, are of the first class; those seating less than nine hundred and seventy-five are of the second class; one seat is twenty-two inches. Licenses shall be granted to theaters and other places of amusement according to the following schedule:

If for less than one month.	If for one month and less than three months—	If for three months and less than one year—	If for one year.
1st class, $5 per day	$100 per month	$300 per quarter	$600
2d class, $5 per day	$75 per month	$200 per quarter	$400

Third—For each exhibition, for pay, for a caravan or menagerie, or any collection of animals, circus or other acrobatic performance, ten dollars; and for each show, for pay, of any figures, jugglers, necromancers, magicians, wire or rope dancing, or sleight of hand exhibition, five (5) dollars each day.

Fourth—From each pawnbroker, thirty (30) dollars per quarter.

Five—From each keeper of all intelligence offices, fifteen (15) dollars per quarter. En. March 12, 1872. Am'd. 1873-4, 44.

Subds. 2 and 3. Inapplicable to charitable entertainments: Post, sec. 3386.

§ 3381. Retail liquor licenses. Every person who sells spirituous, malt, or fermented liquors or wine, in less quantities than one quart, must obtain a license from the tax collector as prescribed in this chapter, and make therefor the following payment:

1. Those making sales to the amount of ten thousand dollars or more as a monthly average, constitute the first class, and must pay forty dollars per month;

2. Those making sales to the amount of five thousand dollars, and not exceeding ten thousand dollars as a monthly average, constitute the second class, and must pay twenty dollars per month;

3. And those making sales of less than five thousand dollars, constitute the third class, and must pay five dollars per month. En. March 12, 1872.

Cal.Rep.Cit. 74, 24.

§ 3382. Merchant's license. Every person who, at a fixed place of business, sells any goods, wares, or merchandise, wines, or distilled liquors, drugs, or medicines, jewelry, or wares of precious metals, whether on commission or otherwise (except agricultural or vinicultural productions, or the productions of any stock, dairy, or poultry farm of this state, when sold by the producer thereof, and except such as are sold by auctioneers at public sale under license), and all persons who keep horses or carriages for hire (except such as are used in the transportation of goods), must obtain from the tax collector of the county in which the business is transacted, and for each branch of such business, license, and pay quarterly therefor an amount of money to be determined by the class in which such person is placed by the tax collector; such business to be classified and regulated by the amount of the average monthly sales made or hiring done, and at the rates following:

1. Those who are estimated to make average monthly sales or hiring to the amount of one hundred thousand

dollars or more, constitute the first class, and must pay fifty dollars per month.

2. Of seventy-five thousand dollars, and less than one hundred thousand dollars, constitute the second class, and must pay thirty-seven dollars and fifty cents per month.

3. Of fifty thousand dollars, and less than seventy-five thousand dollars, constitute the third class, and must pay twenty-five dollars per month.

4. Of forty thousand dollars, and less than fifty thousand dollars, constitute the fourth class, and must pay twenty dollars per month.

5. Of thirty thousand dollars, and less than forty thousand dollars, constitute the fifth class, and must pay fifteen dollars per month.

6. Of twenty thousand dollars, and less than thirty thousand dollars, constitute the sixth class, and must pay ten dollars per month.

7. Of ten thousand dollars, and less than twenty thousand dollars, constitute the seventh class, and must pay seven dollars and fifty cents per month.

8. Of five thousand dollars, and less than ten thousand dollars, constitute the eighth class, and must pay five dollars per month.

9. Of two thousand five hundred dollars, and less than five thousand dollars, constitute the ninth class, and must pay three dollars per month.

10. Of all amounts over twelve hundred and fifty dollars, and under two thousand five hundred dollars per month, constitute the tenth class, and must pay one dollar and fifty cents per month.

11. Of all amounts less than twelve hundred and fifty dollars per month, constitute the eleventh class, and must pay one dollar per month. En. March 12, 1872. Am'd. 1873-4, 137.

Cal.Rep.Cit. 74, 24.

Wines or distilled liquors, application of provision: Post, sec. 3383.

§ 3383. **Exception in using liquors.** The sale of liquors and wines by persons licensed under the preceding section must not be in less quantity than one quart measure. No license must be required of physicians, surgeons, apothe-

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caries, or chemists, for any wines or spirituous liquors they may use in the preparation of medicines. En. March 12, 1872.

§ 3384. Peddlers' and hawkers' license. Every traveling merchant, hawker, or peddler, who carries a pack and vends goods, wares, or merchandise of any kind other than the manufactures or productions of this state, must pay for a license five dollars per month; and every such traveling merchant, hawker, or peddler, who uses a wagon, or one or more animals, for the purpose of vending such goods, wares, or merchandise of any kind, must pay for a license fifteen dollars per month; and every traveling merchant, hawker, or peddler, who uses a trading boat or other watercraft only, shall pay a merchant's license, according to the provisions and classifications of section three thousand three hundred and eighty-two of this code. En. March 12, 1872. Am'd. 1875-6, 55.

Cal.Rep.Cit. 57, 92.

§ 3385. Animals kept for propagation to be licensed. Every person who keeps a stallion, jack, or bull, and who permits the same to be used for the purpose of propagation for hire, must annually obtain a license therefor from the tax collector, and pay therefor as follows:

1. Horses that are hired for the purpose of propagation, by the season, at one hundred dollars or more, constitute the first class, and require a license of seventy-five dollars.

2. At seventy-five dollars, and less than one hundred dollars, constitute the second class, and require a license of sixty dollars.

3. At fifty dollars, and less than seventy-five dollars, constitute the third class, and require a license of forty dollars.

4. At thirty dollars, and less than fifty dollars, constitute the fourth class, and require a license of twenty-five dollars.

5. At fifteen dollars, and less than thirty dollars, constitute the fifth class, and require a license of fifteen dollars.

6. All at less than fifteen dollars, constitute the sixth class, and require a license of ten dollars.

7. For each jack, ten dollars.

8. For each bull, ten dollars.

A license so obtained from the tax collector, under the provisions of this act, shall entitle the holder thereof [to] the right to go into any county of this state for the purposes of propagation, without further license or expense. En. March 12, 1872. Am'd. 1875-6, 56.

§ 3386. Certain exhibitions, etc., exempted. The provisions of subdivisions 2 and 3, of section 3380, do not apply to exhibitions or entertainments given for the benefit of churches, schools, or other charitable entertainments, by any amateur dramatic association or literary society of the town or district in which such exhibition or entertainment is given. En. March 12, 1872.

Cal.Rep.Cit. 76, 276.

§ 3387. Present incumbents must collect licenses. In every county in this state where any officer other than the tax collector is charged with the collection of license taxes, such officer must, until after the expiration of the term of the present incumbent, discharge the duties cast upon the tax collector under the provisions of articles I and II of this chapter. En. March 12, 1872.

Part 3

TITLE VIII.

PROPERTY OF THE STATE.

Chapter I. The Public Lands, §§ 3395-3574.
II. The Yosemite Valley and Mariposa Big Tree Grove, §§ 3584-3586.
III. The State Burying Ground, §§ 3596-3597.

CHAPTER I.

THE PUBLIC LANDS.

Article I. General Provisions Respecting the Public Lands, §§ 3395-3429.
II. Swamp and Overflowed, Salt Marsh and Tide Lands, §§ 3440-3493½.
III. School Lands, §§ 3494-3503.
IV. Payments, Certificates of Purchase and Patents, §§ 3512-3523.
V. Selection and Sale of University Lands, §§ 3533-3536.
VI. Proceedings against Delinquent Purchasers, §§ 3546-3556.
VII. Miscellaneous Provisions Relating to Public Lands, §§ 3566-3574.

ARTICLE I.

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§ 3425. Treasurers to pay over moneys received.
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§ 3427. Interest, how computed and when payable.
§ 3428. Compensation of county treasurer and auditor. (Repealed.)
§ 3429. Instructions and forms.

§ 3395. Register to keep certain accounts and records. The register of the state land office must keep separate accounts and records in relation to each class of lands to which the state is entitled, which must show:

1. The number of the survey or location, and the date of the approval;

2. The name of the locator, the description of the lands by legal subdivisions, the price per acre at which they are sold, the amount paid, the date of payment, the number and date of the certificate of purchase;

3. The date of the patent, when it has been issued. En. March 12, 1872.

Register of the state land office, surveyor-general is ex-officio: Ante, secs. 350, 497. Deputy, same: Ante, secs. 350, 497. Clerks: Ante, sec. 343. Duties, referred to as

being prescribed in this portion of code: Ante, sec. 498. Salary of clerks: Ante, sec. 500. Fees: Ante, sec. 501. Bond: Ante, sec. 502.

§ 3396. **Must keep plats and note locations thereon.** He must also keep plats of such lands, upon which all approved locations and surveys must be designated by their numbers. En. March 12, 1872.

§ 3397. **Must note on plats the issuing of certificates or patents.** When certificates of purchase or patents are issued, the fact must be noted on the plats. En. March 12, 1872.

Payments, certificates of purchase and patents: Post, secs. 3512-3523.

§ 3398. **Surveyor-general to be state locating agent.** The surveyor-general is the general agent of the state for the location in the United States land offices of the unsold portion of five hundred thousand acres of land granted to the state for school purposes, and the sixteenth and thirty-sixth sections granted for the use of public schools, and lands in lieu thereof. En. March 12, 1872.

School lands: Post, secs. 3494-3503.

Booth act: See act of congress, March 2, 1853, 10 U. S. Stats. 244, for the act reserving to California for school purposes the sixteenth and thirty-sixth sections of each township.

§ 3399 to 3404. **(Repealed.)** En. March 12, 1872. Rep. 1873-4, 139.

§ 3405. **Surveyor-general to keep certain records.** The surveyor-general must provide the necessary record book, and cause all lists or patents for lands from the United States to be recorded therein. En. March 12, 1872.

§ 3406. **Duty of surveyor-general on application for purchase.** The surveyor-general must, whenever application is made to him for any portion of the lands mentioned in section 3398, communicate with the United States land office, and ask that the lands described in the application be accepted in part satisfaction of the grant under which it is sought to be located. En. March 12, 1872.

Cal.Rep.Cit. 81, 606.

§ 3407. Same. When the acceptance of the register of the United States land office is obtained, he must give to the party applying a copy of his approval. En. March 12, 1872.

Cal.Rep.Cit. 81, 606.

§ 3408. When townships are surveyed. (Repealed.) En. March 12, 1872. Rep. 1875-6, 57.

Cal.Rep.Cit. 52, 94.

§ 3409. Statement as to condition of school sections. The surveyor-general must, after the survey of any township by the United States surveyor-general, obtain from the United States land office a statement, showing whether or not the sixteenth and thirty-sixth sections therein belong to the state. En. March 12, 1872.

Cal.Rep.Cit. 82, 515; 82, 573.

Application to purchase sixteenth and thirty-sixth sections: See sec. 3495, post.

§ 3410. Registers and receivers, how compensated for services. The registers and receivers of the United States land offices must present their accounts for services rendered the state to the surveyor-general, who, if he finds the same correct, according to fees allowed registers and receivers by act of congress, or by the department of the interior, must certify the same to the state board of examiners, who must audit and allow such accounts, and they must be paid out of the general fund. En. March 12, 1872.

State board of examiners: Ante, secs. 654-685.

§ 3411. Surveyor-general to represent state in contests. The surveyor-general must represent the state in all contests between it and the United States in relation to public lands. En. March 12, 1872.

§ 3412. Place of taking testimony to be fixed. When he desires to take testimony under the provisions of the act of congress to quiet land titles in California, passed July, eighteen hundred and sixty-six, he must request the United States surveyor-general to fix a place convenient of access by the witnesses, and the time for taking such testimony. En. March 12, 1872.

§ 3413. Attorney-general, attendance. Traveling expenses. He may require the attorney-general to attend and represent the state at the taking of such testimony; and the traveling expenses of each are a charge against the state. All claims for traveling expenses must be audited and allowed by the board of examiners, and paid out of the general fund. But not more than fifteen hundred dollars must be allowed in any one year for such expenses. En. March 12, 1872.

Cal.Rep.Cit. 69, 224.

Board of examiners: Ante, secs. 654-685.

§ 3414. Contest, how disposed of. When a contest arises concerning the approval of a survey or location before the surveyor-general, or concerning a certificate of purchase or other evidence of title before the register, the officer before whom the contest is made may, when the question involved is as to the survey, or one purely of fact, or whether the land applied for is a part of the swamp or overflowed lands of the state, or whether it is included within a confirmed grant, the lines of which have been run by authority of law, proceed to hear and determine the same; but when, in the judgment of the officer, a question of law is involved, or when either party demands a trial in the courts of the state, he must make an order referring the contest to the district court of the county in which the land is situated, and must enter such order in a record book in his office. En. March 12, 1872.

Cal.Rep.Cit. 52, 379; 54, 632; 56, 123; 57, 75; 60, 123; 68, 481; 70, 151; 72, 237; 72, 448; 74, 582; 76, 177; 77, 101; 81, 606; 82, 515; 82, 572; 82, 574; 91, 32; 91, 34; 96, 117; 98, 402; 106, 491; 108, 68; 132, 541; 133, 543; 136, 494.

Form of application to purchase in sixteenth and thirty-sixth sections: See post, sec. 3495.

Same of swamp land: Post, sec. 3443.

§ 3415. Same. After such order is made either party may bring an action in the superior court of the county in which the land in question is situated, to determine the conflict, and the production of a certified copy of the entry, made by either the surveyor-general or the register, gives the court full and complete jurisdiction

to hear and determine the action. En. March 12, 1872. Am'd. 1880, 108.

Cal.Rep.Cit. 54, 632; 56, 123; 57, 76; 60, 123; 68, 482; 70, 151; 70, 152; 72, 448; 74, 582; 82, 572; 82, 574; 91, 82; 91, 84; 98, 402; 106, 487; 133, 542.

§ 3416. **Effect of judgment.** Upon filing with the surveyor-general or register, as the case may be, a copy of the final judgment of the court, that officer must approve the survey or location, or issue the certificate of purchase or other evidence of title in accordance with such judgment. En. March 12, 1872.

Cal.Rep.Cit. 57, 76; 57, 77; 60, 123; 60, 124; 60, 125; 64, 46; 70, 151; 77, 207; 98, 403; 136, 496.

Must approve the survey or location on this provision as well as secs. 3414 and 3415, ante.

§ 3417. **Limitations.** Unless the party contestant commences his action within sixty days after the order of reference is made, his rights in the premises and under this application cease. En. March 12, 1872.

Cal.Rep.Cit. 72, 449; 77, 311; 79, 2; 79, 3.

§§ 3418 to 3421. (Repealed.) En. March 12, 1872. Rep. 1873-4, 141.

§ 3422. **County treasurer to report to register.** Upon the first day of every month the county treasurer must make a report to the register of all moneys received for land during the preceding month, showing the number of the location or survey, the name of the purchaser, and the amount paid since the date of his last report, whether as principal or interest, which amounts must be entered in the columns belonging to the particular class of land upon which each payment has been made. The payment of the fee for the certificate of purchase must also be entered in the proper column, and the treasurer must then send the report to the auditor, who must compare the items with the account of the treasurer; and if the same agrees with his entries, countersign the report and return it to the treasurer. En. March 12, 1872.

Cal.Rep.Cit. 119, 516.

Payments, certificates of purchase, and patents: See post, secs. 3512-3523.

§ 3423. **Duty of register on receipt of report.** These reports must be forwarded to the register at once, and

upon receipt thereof the register must enter the payment so reported to the credit of the purchaser in the books of his office. He must notify the county treasurer of the receipt of his report, and if it is not correct, return it for correction. En. March 12, 1872.

§ 3424. Quarterly reports of the county treasurers. At the end of each quarter the county treasurer must report to the controller of state the sum which has been received during the quarter upon each class of land; which report must be referred to the register for examination and comparison with the books of his office. En. March 12, 1872.

§ 3425. Treasurers to pay over moneys received. When the register certifies to the correctness of the report it must be returned to the controller, who must thereupon make his settlement with the county treasurer, who must pay over to the treasurer of state all moneys, controller's warrants, or other evidences of state indebtedness which he may have received in payment for such lands, except as provided in the next section. En. March 12, 1872.

§ 3426. Moneys to be retained by county treasurers. The county treasurer must retain all moneys arising from the sale of swamp and overflowed lands, and place the same to the credit of a fund known as the "Swamp Land Fund" of the county. En. March 12, 1872.

Cal.Rep.Cit. 119, 516.

Swamp and overflowed lands, salt marsh and tide lands: Post, secs. 3440-3493½.

§ 3427. Interest, how computed and when payable. The county treasurer must compute interest on all sales from the date of the approval of the survey, or the date of the certificate of location, to the first of January following such date; or if for lands already purchased, then up to the first of January following the day upon which the interest falls due; after which time all payments of principal or interest fall due on the first day of January. En. March 12, 1872.

§ 3428. Compensation of county treasurer and auditor. (Repealed.) En. March 12, 1872. Rep. 1897, 427.

Cal.Rep.Cit. 68, 55.

§ 3429. Instructions and forms. The surveyor-general and register must issue all instructions, and prepare and have printed all blank forms necessary to carry into operation the provisions of this chapter. En. March 12, 1872.

Actual settlers—state lands to be granted only to: Const. Cal., art. XVII, sec. 3.

ARTICLE II.

SWAMP AND OVERFLOWED, SALT MARSH, AND TIDE LANDS.

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§ 3490. Injuries to levees.
§ 3491. Election of trustees.
§ 3492. Petition for reclamation district.
§ 3493. Dissolution of district.
§ 3493½. Action to determine validity of assessment.

§ 3440. Swamp lands, etc.; price and manner of payment. The swamp and overflowed, salt marsh, and tide lands belonging to the state must be sold at the rate of one dollar ($1.00) per acre, in gold coin, payable, twenty per cent of the principal within fifty days from the date of the approval of the survey by the surveyor-general; and the balance, bearing interest at the rate of seven per cent per annum, payable in advance, is due and payable one year after the passage of any act of the legislature requiring such payment, or before, if desired by the purchasers. Bonds or warrants of districts having an outstanding indebtedness are receivable in ayment for lands in such districts at par. En. March 12, 1872. Am'd. 1880, 58.

§ 3441. Surveys not to be approved until land segregated. The surveyor-general of the state must not approve any application, nor must the register issue evidence of title for swamp and overflowed land, until six months after the same has been segregated by authority of the United States. En. March 12, 1872. Am'd. 1873-4, 141.

Cal.Rep.Cit. 74, 178; 88, 277.

§ 3442. Settlers preferred purchasers for six months. Settlers upon swamp and overflowed lands belonging to the state, who occupy the same for farming or grazing purposes, and whose occupation is evidenced by actual inclosure, or by ditches or monuments showing the actual extent thereof, are preferred purchasers for such land for six months after segregation. En. March 12, 1872.

Cal.Rep.Cit. 52, 159; 82, 143; 88, 459.

§ 3443. Affidavit for purchase of swamp land. Any person desiring to purchase swamp and overflowed, or tide

lands, above low tide, must make an affidavit and file the same in the office of the surveyor-general of the state, that he is a citizen of the United States, or has filed his intention to become so; a resident of the state, of lawful age; that he desires to purchase lands (describing them) under the law providing for the sale of swamp and overflowed and tide lands; that he does not know of any valid claim to the same, other than his own; and, if the land is swamp and overflowed, that he knows the land applied for and the exterior boundaries thereof, and knows, of his own knowledge, that there are no settlers thereon; or, if there are, that the land has been segregated more than six months by authority of the United States, and that the land which he now owns (swamp and overflowed), together with that sought to be purchased, does not exceed six hundred and forty acres.

Any false statement contained in the affidavit defeats the right of the applicant to purchase the land, or to receive any evidence of title thereto, and if willfully false, subjects him also to punishment for perjury. If at any time after such affidavit shall have been filed in the office of the surveyor-general, and prior to the issuance of patent for the lands described therein, whether such affidavit shall have been filed before the passage of this act or thereafter, it shall be made to appear to the surveyor-general by the affidavit of any settler or person occupying such land for farming purposes, that he, or those under whom he claims, have been in the possession and occupancy of such lands, or any part thereof, for farming purposes, for over ten years next prior to the date of the filing of the affidavit of the person desiring to purchase, and that his or their occupancy was open and notorious and was evidenced by actual inclosure, or by ditches, or monuments, or embankments, or levees, showing the actual extent thereof, and that he, or they under whom he claims, had, at the time of the filing of said affidavit by the person desiring to purchase, actually reclaimed such land and reduced the same to a state of cultivation, and had been farming and cultivating the same; or if it shall appear from such affidavit filed by such person, that the affidavit filed by the person desiring to purchase the land is false in any of the statements made therein, the surveyor-general shall make an order

referring the questions raised by such affidavits to the superior court of the county in which the land, or some part thereof, is situated. Within thirty days from the date of such order of reference, the party filing the affidavit raising such questions shall commence, in said court, an action to determine the same. In his complaint in said action he shall set forth copies of the affidavit filed by the person desiring to purchase said land, and of the affidavit filed by himself with the surveyor-general. The production of a certified copy of such order of reference shall give such court full and complete jurisdiction to hear and determine the action. Pending the final judgment in such action, all proceedings in the surveyor-general's office respecting such lands shall be stayed. If upon the trial of such action it shall appear that the statements made in the affidavit filed by the person desiring to purchase the land were, in any of the statements made therein, false, or if it shall appear that the statements made in the affidavit filed by the settler or occupant of such land are true, the approval of location or certificate of purchase, if any shall have been made or issued, shall be canceled by judgment of said court. But if it shall appear upon the trial of said action that the statements contained within the affidavit of the person desiring to purchase the land are true, and the statements made in the affidavit of the settler or occupant are untrue, the said court shall enter its judgment accordingly. Upon the filing with the surveyor-general of a copy of the final judgment of the court in said action, that officer must, if the judgment of said court shall cancel such location or certificate of purchase, enter an order of cancellation accordingly. But if by said judgment it shall be decreed that the person desiring to purchase said land is entitled to purchase the same, the surveyor-general shall approve the location, or issue the certificate of purchase or other evidence of title, in accordance with such judgment. En. March 12, 1872. Am'd. 1873-4, 140; 1903, 67.

Cal.Rep.Cit. 52, 380; 54, 214; 65, 93; 73, 629; 74, 178; 78, 117; 82, 140; 83, 4; 88, 277; 88, 459; 88, 593; 88, 594.

§ 3444. If made by female, what must show. If the applicant is a female, such affidavit must also show that

she is entitled to purchase real estate in her own name. En. March 12, 1872.

Cal.Rep.Cit. 78, 630.

§ 3445. **Land segregated, but not sectionized.** Any person desiring to purchase lands, as provided in section three thousand four hundred and forty-three of this code, which have been segregated by authority of the United States, but which have not been sectionized by the same authority, must apply to the surveyor of the county in which the land is situated, to have the land which he desires to purchase surveyed, and a certificate of such survey must be attached to the affidavit required for the purchase of lands, as provided in said section. All surveys, required of county surveyors by the provisions of this section, must conform, as nearly as practicable, to the system adopted by the United States for the survey of the public lands. En. March 12, 1872. Am'd. 1873-4, 141.

Cal.Rep.Cit. 74, 178; 88, 277; 88, 593; 91, 525.

§ 3446. **Formation of reclamation districts, petition for.** Whenever the holders of title or evidence of title representing one half or more of any body of swamp and overflowed, salt marsh, or tide lands, susceptible of one mode of reclamation, desire to reclaim the same, they may present to the board of supervisors of the county in which the lands or the greater part thereof are situated, at a regular meeting of the board, a petition, setting forth that they propose to form a district for the reclamation of the same, a description of the lands by legal subdivisions or other boundaries, the county in which they are situated, the number of acres in the proposed district and in each tract, with the names (if known) of the owners thereof, and designating as unsold any lands not reduced to private ownership. En. March 12, 1872. Am'd. 1873-4, 45. 1905 70

Cal.Rep.Cit. 51, 594; 58, 124; 58, 275; 108, 316; 108, 318; 117, 117; 130, 503; 130, 611; 130, 615; 134, 478.

Reorganization of district under the code: See sec. 3478, post.

Reclamation district a public corporation: See sec. 3452, post.

§ 3447. **Petition, verification and publication of.** The petition must be verified by the affidavit of one of the

petitioners, and must be published for four weeks next preceding the hearing thereof, in some newspaper published in the county in which the lands are situated; or, if there is no newspaper published in the county, then it must be published in some newspaper having a general circulation in the county, and an affidavit of publication must be filed with such petition. En. March 12, 1872.

Cal.Rep.Cit. 58, 238; 128, 517.

§ 3448. **District situated partly in different counties.** When a district is situated partly in different counties, the trustees must, after the petition has been granted, forward a copy thereof to the clerk of the board of supervisors of each of the counties in which any portion of the district may lie, and the board to which the same is forwarded must not allow another district to be formed within such district, unless with the consent of the trustees thereof. En. March 12, 1872.

Cal.Rep.Cit. 58, 275.

Boards of supervisors of Yolo and Solano counties—may approve any petition presented pursuant to secs. 3446 and 3447, whether lands form part of another district or not: See Stats. 1874, p. 602.

§ 3449. **Proceedings on approval of petition.** If the board of supervisors find, on the hearing of the petition, that its statements are correct, they must make an order approving the same. If it be shown that any land has been improperly included in or excepted from the proposed district, they must re-form the district in such respects in their order. The order of approval must be indorsed on or attached to the petition, and be signed by the president and attested by the clerk of the board. En. March 12, 1872. Am'd. 1873-4, 45.

§ 3450. **Petition, where to be recorded.** The petition must then be recorded by the county recorder in a book kept for the purpose of recording papers relative to reclamations, and a certified copy thereof forwarded to the register. En. March 12, 1872.

§ 3451. **Duty of register on receipt of copy.** The register must thereupon forward to the county treasurer a statement showing the names of purchasers of land in

the district, who have paid in full therefor. En. March 12, 1872. Am'd. 1873-4, 46.

§ 3452. **By-laws for government of district.** After the approval of the petition, the owners of land embraced in the district, or those owning a majority in acreage thereof, must adopt by-laws, not inconsistent with the laws of the state, for the government and control of the affairs of the district. The by-laws thus adopted must be signed by the holders of certificates of purchase, patents, or other evidences of title, representing a majority in acreage of the land embraced in the district, and must be by them filed for record with the county recorder of the county, and by him recorded in a book kept by him for the purpose of recording instruments and writings relating to reclamation. By-laws thus adopted may be amended at any time in the same manner that the original by-laws were adopted. En. March 12, 1872. Am'd. 1873-4, 46; 1887, 238.

Cal.Rep.Cit. 54, 537; 58, 124.

§ 3453. **Board of trustees.** After the approval of the petition and the adoption of by-laws, the board of supervisors of the county where the district was formed, on the application of a land owner of the district, must call an election in compliance with the provisions of section thirty-four hundred and ninety-one of this code, at which election there must be elected, under and in pursuance of the provisions of said section thirty-four hundred and ninety-one, three eligible persons, who shall constitute, when elected and qualified, the board of trustees of the district, for the management of the affairs thereof, and who shall hold office for two years next succeeding their election, and until their successors are elected and qualified. The board of trustees must keep an office in or near the district for the transaction of the business thereof, and the books, maps, papers, records, contracts, and other documents pertaining to the affairs of the district must be open to inspection by any person interested at all times. From and after the election and qualification of said trustees said district shall be deemed organized and shall have power to sue and be sued. En. March 12, 1872. Am'd. 1887, 239; 1899, 9.

Cal.Rep.Cit. 58, 125.

§ 3454. **Powers of trustees.** The board of trustees shall have power to elect one of its members president thereof; to employ engineers and others to survey, plan, locate, and estimate the cost of the works necessary for the reclamation of the lands of the district; to thereafter, at any time, in its discretion, modify or change such original plan or plans, or adopt new, supplemental, or additional plan or plans, when, in its judgment, the same shall have become necessary; to acquire, by purchase, condemnation, or otherwise, the right of way, and the right to take material for the construction of all works necessary for the accomplishment of that object, including drains, canals, sluices, bulkheads, water-gates, levees, and embankments, and to construct, maintain and keep in repair all works requisite and necessary to that end; and to do all other acts and things necessary or required for the reclamation of the lands embraced in the district. And the several members of the board shall each be entitled to receive for actual and necessary services performed, and for expenses incurred by them, respectively, for and in the interest of the district, such compensation as the board may determine to be just and reasonable, and shall allow, and the same shall constitute an indebtedness of the district, for which warrants of the district must be drawn and paid in the same manner and out of the same fund as other warrants of the district; provided, that no warrant thus drawn shall be valid until approved by the board of supervisors of the proper county. En. March 12, 1872. Am'd. 1887, 239; 1891, 436.

Cal.Rep.Cit. 54, 537; 58, 125; 104, 384; 104, 386; 129, 627.

§ 3455. **Board of trustees to report plans, etc.** The board of trustees must report to the board of supervisors of the county, or if the district is in more than one county, then to the board of supervisors of each county, in which any portion of the district is situated, such original plan or plans of the work; and every such new, supplemental, or additional plan, if any, together with estimates of the cost of the works necessary for the reclamation of the lands of the district in pursuance of any such plan or plans; together, also, with estimates of incidental expenses of superintendence, repairs, and the cost of col-

lection of assessments, etc. En. March 12, 1872. Am'd. 1891, 436.

Cal.Rep.Cit. 51, 476; 54, 538; 57, 42; 58, 125; 58, 276.

§ 3456. Commissioners to assess charges for reclamation. The board of supervisors of the county in which the district is situated, or if the district is in more than one county, then the board of supervisors of the county in which the greater portion of the land in said district is situated, must appoint three commissioners, disinterested persons, residents of the county in which the district, or some part thereof is situated, who must view and assess upon the land situated within the district a charge proportionate to the whole expense and to the benefits of which will result from such works, and estimate it in gold and silver coin of the United States. The same must be collected and paid into the county treasury as hereinafter provided, and be placed by the treasurer to the credit of the district, and paid out for works of reclamation upon the warrants of the trustees, approved by the board of supervisors of the county. En. March 12, 1872. Am'd. 1873-4, 46; 1903, 31.

Cal.Rep.Cit. 51, 476; 52, 211; 54, 538; 57, 42; 57, 44; 57, 586; 58, 276; 61, 106; 64, 208; 70, 567; 75, 450; 75, 451; 108, 325; 121, 98; 129, 624; 129, 627; 130, 503; 134, 674; 134, 675.

Collection of assessments: See sec. 3466, post.

§ 3457. Warrants, presentation, etc. The warrants drawn by the trustees must, after they are approved by the board of supervisors, be presented to the treasurer of the county, and if they are not paid on presentation, such indorsement must be made thereon, and they must be registered and bear interest from the date of presentation; provided, warrants heretofore issued shall bear no interest. En. March 12, 1872. Am'd. 1873-4, 47. 1905 64

Cal.Rep.Cit. 58, 276; 121, 98; 134, 674; 134, 675.

§ 3458. District situated partly in different counties; charges, where paid. If a district is situated partly in different counties, the charge must be paid into the treasury of the county in which the particular tract may be situated. En. March 12, 1872.

Cal.Rep.Cit. 58, 276; 121, 98.

§ 3459. Additional assessments. If the original assessment is insufficient to provide for the complete reclama-

tion of the lands of the district, or if further assessments are from time to time required to provide for the protection, maintenance, and repair of the reclamation works, the trustees must present to the board of supervisors of the county in which the district is situated, or if the district is situated in more than one county, then to the board of supervisors of the county in which the greater portion of the lands in said district are situated, a statement of the work done or to be done, and its estimated cost, and such board must make an order directing the commissioners who made the original assessment, or other commissioners, to be named in such order, to assess the amount of such estimated cost as a charge upon the lands within the district, which assessment must be made and collected in the same manner as the original assessment. En. March 12, 1872. Am'd. 1873-4, 47; 1903. 31.

Cal.Rep.Cit. 49, 665; 51, 476; 51, 478; 57, 42; 58, 125; 64, 209; 98, 53; 121, 98.

§ 3460. **Commissioners to make assessment lists.** The commissioners appointed by the board of supervisors must make a list of the charges assessed against each tract of land; and if there be any error or mistake in the description of the land, or in the name of the owner, or if any land which should be assessed has been or shall be omitted from the list, or if there is any error or mistake in any other respect, the commissioners shall amend or correct the same at any time, either before or after the lists shall have been filed with the treasurer of the county. En. March 12, 1872. Am'd. 1891, 286.

Cal.Rep.Cit. 57, 42; 124, 178.

§ 3461. **Contents of list.** The list must contain:

1. A description by legal subdivisions, swamp land surveys, or natural boundaries of each tract assessed.

2. The number of acres in each tract.

3. The names of the owners of each tract, if known; and if unknown, that fact.

4. The amount of the charge assessed against each tract. En. March 12, 1872. Am'd. 1873-4, 49.

Cal.Rep.Cit. 54, 538; 57, 42; 75, 451; 101, 566; 121, 656; 121, 659; 124, 178; 124, 179.

§ 3462. **Lists, where filed.** The list so made must be filed with the treasurer of the county, or if the district

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is situated in different counties, then the original list must be filed in the county where the petition was filed, and copies thereof, certified by the commissioners, must be filed with the treasurer of each of the other counties. En. March 12, 1872. Am'd. 1873-4, 47.

Cal.Rep.Cit. 54, 538; 57, 42.

§ 3463. **Lien acquired by filing lists.** From and after the filing of the list, or certified copy thereof, the charges assessed upon any tract of land within the county constitute a lien thereon. En. March 12, 1872. 1905 55

Cal.Rep.Cit. 57, 42; 115, 175.

§ 3464. **Credit to be given to owner of land.** When the list, or a certified copy thereof, is filed, the treasurer must credit thereon, to each purchaser who has paid in full for his land, eighty cents per acre, less any amount chargeable against him, and must transfer the amount to the credit of the district. En. March 12, 1872. Am'd. 1873-4, 48.

§ 3465. **Payment, how made.** The lists thus prepared and filed must remain in the office of the treasurer for thirty days, or longer, if ordered by the board of trustees; and during the time they so remain any person may pay the amount of the charge assessed against any tract of land to the treasurer, in gold coin of the United States, or in warrants of the district drawn by order of the trustees thereof, and approved by the board of supervisors of the county. Where payment is made in the warrants of the district, legal interest must be computed thereon from the date thereof to the time of such payment, when said warrants must be surrendered to the treasurer and by him canceled. En. March 12, 1872. Am'd. 1875-6, 57.

Cal.Rep.Cit. 57, 42; 58, 276; 70, 571.

§ 3466. **Delinquent assessments, how collected.** At the end of thirty days, the treasurer must return the list to the board of trustees of the district, and all unpaid assessments shall bear legal interest from the date of the return of the list to said board, and shall thereafter be collected and paid in separate installments, of such amounts and at such times, respectively, as the board, from time to time, in its discretion, may, by order entered 62

in its minutes, direct; and a cause of action for the collection of any such installment shall accrue at the expiration of twenty days from the date of the order directing its payment; provided, that if any such installment shall remain unpaid at the expiration of said twenty days, then the whole of the assessment against the land owned by the person failing to pay such installment shall become due and payable at once, and may, in the discretion of the board, be collected immediately, in one and the same action. The board of trustees of the district must commence actions for the collection of such delinquent installments and delinquent assessments, with interest thereon, and costs, and for the enforcement of the lien on the land assessed, in the superior court of the county in which the land is situated, against the person to whom the same shall have been assessed; and if assessed to "unknown owners," then against the real owners, giving a full description by legal subdivisions or definite boundaries, and all persons having or claiming any interest therein, by fictitious names; or if the person to whom the land was assessed shall have conveyed the same to any other person or persons subsequently to the levy of such assessment, and such other person or persons shall be known to the board of trustees of the district to be the owner or owners of the land at the date of the commencement of the action, or if, at the date of the commencement of the action, the owner of the land assessed to "unknown owners" shall be known to the board, then (in either of the last-mentioned two events) against the then owner or owners of the land assessed. Service of complaint and summons in such action may be made, either in the manner prescribed by the Code of Civil Procedure, or if the owner is unknown or cannot be found, by posting a copy of the summons at the courthouse door, and publishing the same once a week for four successive weeks in a newspaper published in the county; and such posting and publication is equivalent to personal service on all persons having or claiming any right, title, or interest in the land assessed to unknown owners, whether named as a party in such action or not. Proof of such posting and publication must be made by the certificate of the sheriff, or the affidavit of the party making the service. In case the service be made by posting and publication, the de-

fendant, or any person claiming any interest in the land assessed, may appear and answer the complaint within forty days after the expiration of the four weeks of posting and publication. Assessments on several tracts may be included in the same action, if listed to the same person. In all actions for the collection of delinquent assessments, the court may decree and adjudge a lien against each tract for the amount assessed against the same, and may order it to be sold on execution or decree, as in other cases of sale of real estate. The judgment or decree must direct that the sale be made for gold and silver coin of the United States. The board of trustees must pay the moneys collected to the county treasurer, who must place the same to the credit of the district. En. March 12, 1872. Am'd. 1873-4, 48; 1880, 108; 1891, 288.

Cal.Rep.Cit. 54, 538; 56, 607; 56, 608; 57, 42; 57, 586; 61, 106; 66, 58; 104, 340; 112, 87; 112, 88; 121, 659; 121, 660; 130, 503; 130, 504; 131, 665.

§ 3466½. Invalid assessment, crediting payments under. In all cases in which an assessment shall have been levied since October first, eighteen hundred and ninety-six, or shall hereafter be levied, for reclamation purposes, upon the lands embraced within any reclamation district, and the assessment shall have thereafter been or shall be adjudged invalid, by any court of competent jurisdiction, and any landowner of the district shall have paid the amount assessed, in said assessment, against land belonging to him, before said assessment shall have been or shall be so adjudged invalid, the amount so paid by said landowner, together with the legal interest thereon from the date of its payment, shall be credited, by the treasurer of the county in which said land is situated, to the tract of land on which the same was paid, and shall be applied upon any assessment thereafter levied on the lands of the district, to the payment, pro tanto, of the amount therein assessed against said tract of land. En. Stats. 1899, 46.

§ 3467. Work of reclamation to be done under direction of trustees. The work necessary for reclamation must be executed under the direction and in the manner prescribed by the board of trustees. En. March 12, 1872.

Cal.Rep.Cit. 58, 276.

§ 3468. Accounts to be kept open to inspection. The board must keep accurate accounts of all expenditures,

which accounts, and all contracts that may be made by them, are open to the inspection of the board of supervisors and every person interested. En. March 12, 1872.

Cal.Rep.Cit. 58, 276.

§ 3469. **Subsequent purchasers governed by by-laws.** The purchaser of any tract of land which may be unsold in any reclamation district at the date of filing of the by-laws takes the same, subject to all the provisions of such by-laws, and to the charges assessed in pursuance thereof. En. March 12, 1872.

Cal.Rep.Cit. 59, 95.

§ 3470. **Rights of such purchasers, how secured.** Such purchaser has all the rights and privileges enjoyed by the original signers of the by-laws, if he pays into the county treasury twenty per cent of the principal, one year's interest on the remaining eighty per cent, and any charges assessed against the land so purchased for the cost and expense of reclamation, with interest thereon from the date such charges became due. En. March 12, 1872.

§ 3471. **Property may be condemned for reclamation purposes.** The trustees of any reclamation district in which the by-laws have been filed, may acquire rights of way for canals, drains, embankments, and other work necessary to the reclamation, and may take materials for the construction, maintenance, and repair thereof, from lands outside of as well as within the limits of the district; and if the trustees cannot procure the consent of the owner of the lands or material needed, they, or, the president acting in their behalf, may proceed under the provisions of title VII, part III, of the Code of Civil Procedure, for the condemnation thereof. En. March 12, 1872.

Cal.Rep.Cit. 134, 479.

Reclamation district, powers of board of trustees: Ante, sec. 3454.

Condemnation of property for reclamation purposes pursuant to Code of Civil Procedure: See title Eminent Domain, secs. 1237-1263.

§ 3472. **Owners may reclaim without intervention of trustees.** Whenever any district, susceptible of one mode of reclamation, is entirely owned by parties who desire

to reclaim the same, and to manage the reclamation without the intervention of trustees or the establishment of by-laws, they may file the petition provided for in sections thirty-four hundred and forty-six and thirty-four hundred and forty-seven, and must state therein that they intend to undertake the reclamation on their own responsibility. The existence of a reclamation district formed to operate without the intervention of trustees shall not have the effect to prevent the owners of the land included in such district from forming a district to operate with trustees, and such owners may present to the board of supervisors the petition provided for in section thirty-four hundred and forty-six or in section thirty-four hundred and ninety-two, and the presentation of such petition shall be deemed an abandonment and surrender of the rights, immunities, and privileges conferred upon such owners or their predecessors or predecessor in interest in such land by the creation of such original district. En. March 12, 1872. Am'd. 1897, 194.

Cal.Rep.Cit. 128, 517; 128, 518.

§ 3473. Their powers and duties. If the petition is granted, the owners of the lands have all the rights, immunities, and privileges granted to boards of trustees; and in all proceedings the names of the owners may be used instead of the names of trustees. En. March 12, 1872.

Cal.Rep.Cit. 128, 517.

§ 3474. When works of reclamation are in progress, interest to cease. Whenever the supervisors of any county in which any reclamation district has been formed, certify to the register that works of reclamation are in progress upon a plan and in conformity with the requirements hereinbefore provided, the payment of interest by purchasers in such districts is suspended; but if the works are not completed and accepted within four years from the date of the filing of the petition, then interest for the whole time must be charged and collected by the register. En. March 12, 1872.

Cal.Rep.Cit. 119, 516.

§ 3475. Power of supervisors to let contracts, etc. The supervisors shall have power, on application of the trustees or owners of any swamp land district, to approve and let any contract to the lowest responsible bidder, and order

the county treasurer to pay for the same out of the funds of the district. En. March 12, 1872. Am'd. 1873-4, 49.

§ 3476. Certificate of completion of work, etc. Whenever the trustees, or owners of land, if there be no trustees, certify under oath to the board of supervisors who form the district and show to their satisfaction that the works of reclamation are completed, or that two dollars per acre, in gold coin, has been expended on the works of reclamation, the board of supervisors must thereupon certify such facts to the register. En. March 12, 1872. Am'd. 1873-4, 50.

Cal.Rep.Cit. 128, 517; 128, 518; 129, 379.

§ 3477. Credit when given, statement forwarded and moneys paid over. The register must thereupon credit each purchaser in the district with payment in full for such lands, and the purchasers are entitled to patents therefor; and the register must forward to the treasurer of the county in which any part of the district is situated, a statement, showing the amount paid by each purchaser in the district, including interest; and the county treasurer, after deducting all amounts chargeable against the lands in said district by reason of moneys drawn from the "Swamp Land Fund" of the county, must divide the balance pro rata amongst the original purchasers of land in the district, or their assigns, and must pay to each purchaser, or his assigns, on demand, the amount found to be due him from such computation, out of the moneys in his hands to the credit of the "Swamp Land Fund" of the county. Neither this nor the preceding section applies to districts having outstanding indebtedness represented by controller's warrants drawn on the state treasury, until all such warrants are fully paid. En. March 12, 1872. Am'd. 1873-4, 50.

Cal.Rep.Cit. 128, 518; 128, 519; 128, 520; 129, 379; 129, 381; 131, 404.

Credits allowed purchasers of reclaimed lands: See act to facilitate equalization of assessments in reclamation districts, Stats. 1881, p. 68.

See, also, General Laws, title Reclamation Districts.

Swamp land funds arising from sales, distribution of in the several county treasuries: Stats. 1874, p. 770.

§ 3478. Old districts may reorganize under this chapter. Districts formed under laws in force prior to May twenty-eighth, eighteen hundred and sixty-eight, may reorganize under the provisions of this chapter. En. March 12, 1872.

Cal.Rep.Cit. 58, 126; 64, 206; 64, 210; 74, 554.

Reorganization and consolidation of swamp land, levee and reclamation districts: Post, sec. 3489.

§ 3479. Trustees may compromise indebtedness of, and levy tax to pay the same. But if such districts are in debt, the trustees thereof have no power to impair or destroy any indebtedness of the district without the consent of the creditors, but may make any arrangement with the creditors for the surrender of such indebtedness at less than par, and if authorized by the by-laws, may assess a charge on the property of the district for the payment thereof. En. March 12, 1872.

Funding the indebtedness of reclamation and levee districts under charge of reclamation fund commissioners: Stats. 1872, p. 835.

§ 3480. Bonds and warrants redeemed may be used by trustees in purchase of land in district. If the trustees of any district referred to in the preceding section redeem the bonds and warrants of such district, they may select any unsold lands therein, and pay for the same with such bonds or warrants at par, and upon such payment the register must issue to them certificates of purchase, and when the lands have been reclaimed they are entitled to patents therefor. Such lands may be sold by the trustees; and if sold, the proceeds must be paid into the fund of the district. En. March 12, 1872.

§ 3481. Unreclaimed lands may be set off in separate district. If the owners of lands representing more than two thirds of any body of lands within any reclamation or swamp land district, and in which the lands have not been reclaimed, desire to have the said body of lands set off from such district, they must, in addition to the petition required by section three thousand four hundred and forty-six, show to the board of supervisors that the said body of lands is capable of an independent reclamation. En. March 12, 1872. Am'd. 1880, 61.

Cal.Rep.Cit. 51, 308; 51, 593; 73, 260; 74, 551; 74, 552; 74, 553; 74, 554; 74, 555; 117, 117; 117, 118; 130, 609; 134, 298.

§ 3482. Liability of such district for original indebtedness. The district so set off shall be liable for its just proportion of the legal indebtedness of the original district from which it was set off, when the same shall have been ascertained by law. En. March 12, 1872. Am'd. 1873-4, 142.

§ 3483. Districts, how designated. All districts organized under this chapter must have a state number, and the register, upon the receipt of a copy of a petition, must number the same, and send their number to the county recorder of the county from which the copy came, and the recorder must number the petition upon record in like manner, and the district must thereafter be known and designated thereby. Districts organized before May twenty-eighth, eighteen hundred and sixty-eight, may retain their number. En. March 12, 1872.

§ 3484. In Sacramento, supervisors may employ clerk. No member of any board of supervisors or any clerk of such board must receive compensation, other than his regular salary, for services performed under this chapter; but the board of supervisors of Sacramento County may employ a clerk to attend to matters pertaining to swamp lands, and pay such clerk by orders on the swamp land fund of the district for which work is performed, not to exceed five dollars for each day he is actually engaged. En. March 12, 1872.

§ 3485. Payment on land sold for five years or less, when to be made. The balance of the principal on all lands in districts having an outstanding indebtedness, which have been sold for five years, is payable at once; and on all lands in such districts which have been sold less than five years, the balance is payable on the first of January following the expiration of five years from the date of sale. En. March 12, 1872.

§ 3486. Occupants of land on banks of stream liable for damages, when. Any person owning or occupying lands upon the banks of any stream where the lands lying back of such stream are lower than the bank thereof, is responsible for all damages which may be sustained by the owners or occupants of lower lands by reason of any cut or embrasure made in the bank of such stream by the owner or occupant of the bank. En. March 12, 1872.

§ 3487. Proof in mitigation of damages. If such cuts were made for the purpose of irrigation, and headgates and culverts have been made which competent persons consider sufficient to restrain the water, and where great diligence has been made to prevent damage, these facts may be pleaded and proved, in mitigation of damages. En. March 12, 1872.

§ 3488. Certain lands excepted from the provisions of this chapter. All swamp and overflowed salt-marsh and tide lands within one mile of the state prison at San Quentin, within the city and county of San Francisco, city of Oakland, or within five miles of the corporate limits of either, and tide lands within two miles of any other incorporated cities or towns, are excluded from the operation of this chapter; provided, that the provisions of sections thirty-four hundred and forty-six, thirty-four hundred and forty-seven, thirty-four hundred and forty-nine, thirty-four hundred and fifty, thirty-four hundred and fifty-two, thirty-four hundred and fifty-three, thirty-four hundred and fifty-four, thirty-four hundred and fifty-five, thirty-four hundred and fifty-six, thirty-four hundred and fifty-seven, thirty-four hundred and fifty-nine, thirty-four hundred and sixty, thirty-four hundred and sixty-one, thirty-four hundred and sixty-two, thirty-four hundred and sixty-three, thirty-four hundred and sixty-five, thirty-four hundred and sixty-six, thirty-four hundred and sixty-seven, thirty-four hundred and sixty-eight, thirty-four hundred and seventy-one, thirty-four hundred and seventy-two, thirty-four hundred and seventy-three of this chapter shall be applicable to any lands situated within the limits of any municipality in the state of California of the first class, namely, having a population of more than one hundred thousand, and tide lands within two miles of any other incorporated cities or towns which land is subject to overflow or incursions from the tide or inland waters of the state in any manner; and districts may be formed as in said sections provided for the reclamation thereof, and said lands reclaimed thereunder.

The duties provided for certain county officers in said sections shall be performed by the officers of such municipality, whatever may be their title, who usually perform like duties.

The trustees or the owners indicated in section thirty-four hundred and seventy-three shall have power to let any contract and conduct the operation of reclamation in all respects, and to issue warrants therefor.

The lands mentioned and described in an "Act to survey and dispose of certain salt-marsh and tide lands, belonging to the state of California," approved March thirtieth, eighteen hundred and sixty-eight, and the act supplemental and amendatory thereto, approved April first, eighteen hundred and seventy, must be disposed of as in such acts provided, which are hereby continued in force. En. March 12, 1872. Am'd. 1889, 344; 1891, 215; 1901, 329.

Cal.Rep.Cit. 134, 48.

§ 3489. Reorganizing and consolidating swamp districts. Swamp land, levee, and reclamation districts formed, organized, or erected into districts under special or general laws heretofore or now in force, may reorganize and consolidate in the manner following: Whenever the owners of a majority of acres of land in each of two or more swamp land, levee, or reclamation districts, shall desire to consolidate and reorganize, they may do so by filing a notice with the county recorder of the county in which the greatest portion of the land of the districts is situated, setting forth that they desire to consolidate and reorganize. The notice must give the exterior boundaries of the said district, the name and number of each of them, the number of acres of land that each contains, and must be signed by the persons owning the majority of acres of land in each district, and shall designate the number of acres owned by each signer in the district in which the same is situated. The county recorder shall record and [said?] notice in a book kept for the purpose of recording papers in relation to swamp land and levee districts. He shall make a certified copy of said notice, and forward the same to the state land register, who shall designate a number for the reorganized district, the same as provided for in original organization; after which time the district shall be known as Reclamation District Number ——, and shall be under the operation and governed by the general reclamation laws of the state, as provided in "title eight, chapter one," of the Political Code, and the acts amendatory thereof; and all proceedings thereafter shall be the same as though said district was organized upon an original petition and

granted by the board of supervisors; provided, however, that such consolidation and reorganization shall in no manner invalidate the indebtedness of the original districts; and all the laws, rules, and regulations for the assessing, levying and collecting taxes or assessments in said district shall remain and be in full force, and all levies, assessments and collections required for the payment of the then outstanding indebtedness in said districts, shall be the same as though they had not consolidated and reorganized until such indebtedness shall be paid and liquidated. The owners of a majority of acres of land in a compact form, capable of being embraced in a swamp land or reclamation district contiguous thereto and not a part of another district, may, by consent of the trustees of such district, have such land embraced within such district, by filing a notice with the county recorder of the county in which such district is organized; the notice must give the exterior boundaries of said land, the number of acres of land therein, as near as may be, and must be signed by the persons owning the majority of acres of land therein; and there shall be attached thereto or indorsed thereon a written consent of the trustees of said district that said land be embraced therein. Said notice shall be filed with the county recorder of the county aforesaid, and recorded by him in a book kept for that purpose. From the time of filing of such notice, said land shall become and be held as a part of such district; provided, that the reorganization and consolidation of any two or more districts under the provisions of this act shall not be so construed as to legalize the original organization of any said districts reorganized and consolidated under this act; nor shall any indebtedness or any act of any of said districts, or the officers thereof, prior to the act of reorganization and consolidation, be legalized by this act; provided, further, that no land not included in some of the original districts shall be included in the reorganization and consolidation without the consent of the owner. Nor shall any land purchased of the United States government be included in the reorganization and consolidation without the consent of the owner thereof, although the said government land may have been included in some of the original districts. En. Stats. 1873-4, 51. Am'd. 1877-8, 62.

Cal.Rep.Cit. 67, 527; 67, 528; 67, 529; 67, 531; 74, 554.

Districts formed before code are subject thereto: See Stats. 1885, p. 77.

§ 3490. Injuries to levees. Any person who shall cut, injure, or destroy any levee or other works of reclamation in any district, is responsible for all damages which may be occasioned thereby to such levee works; and an action therefor must be brought in the superior court of the county, or either of the counties in which such levee or works are situated, in the names of the trustees of the district. If there be no trustees, then the action may be brought in the name of any landowner in the district. The amount recovered in such action must be paid to the treasurer of the county, who must place the same to the credit of the district. En. Stats. 1873-4, 51. Am'd. 1880, 23.

Injuries to levees or other works of reclamation by mobs or riots: Post, sec. 4457. Punishment for such and kindred offenses: Pen. Code, sec. 607.

§ 3491. Election of trustees. In each reclamation district in this state, formed under this code or any statute, there shall be an election every two years, held at such time and place, in or near the district, and after such notice as the board of supervisors shall direct; provided, that the notice shall be not less than one month, and at such election each bona fide owner of lands in the district shall be entitled to vote in person or by proxy, and shall have right to cast one vote for each one dollar's worth of real estate owned by him or her in the district, the value thereof to be determined from the next preceding assessment roll of the county, and a majority of the votes cast at such election shall elect. In all elections for trustees every owner of real estate shall have the right to cumulate his or her votes, and give one candidate as many votes as the number of trustees to be elected multiplied by the number of dollars' worth of real estate owned by him or her shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. The board of supervisors to which the petition for the formation of the district was presented shall, upon the application of any landholder in the district, appoint a time and place for holding such election, which election shall be held within sixty days from the time of such application; the place shall in all cases be

in or near the district. Notice of such election shall be given by publication for not less than one month in a newspaper in each county in which any portion of the lands of the district are situated, if any newspaper is published therein, and if not, then in a newspaper having general circulation in such county. The trustees elected under the provisions of section three thousand four hundred and fifty-two shall hold office until their successors are elected under the provisions of this section. For the purposes of such election the board of supervisors of the county in which the whole or the larger part of the lands of any district are situate, must appoint from the landholders of the district one inspector and two judges of election, who shall constitute a board of election for such district; but in case the board of supervisors fail to appoint, or the persons appointed fail to attend at the time and place appointed for the election, the voters present at the time and place of opening the polls may appoint the board, or supply the place of an absent member thereof. Each member of the board must, upon entering upon his duties, be sworn to a faithful performance thereof by some officer authorized to administer oaths. The board of election must canvass the votes cast and issue certificates of election to the persons elected, and must place the ballots, when canvassed, in an envelope and forward the same, sealed, to the clerk of the board of supervisors. Any legally qualified voter may challenge any vote, and the board of election shall determine, by the oath of the parties or otherwise, as they may think proper, whether or not the person challenged is entitled to vote, and in case of challenge, either one of the board of election is hereby authorized to administer oaths. The polls shall be open from ten A. M. until four P. M. In case of vacancy in the board of trustees, the board of supervisors shall, by appointment, fill such vacancy. En. Stats. 1880, 60.

§ 3492. Petition for reclamation district. The holders of title or evidences of title representing one half or more of any body of swamp and overflowed, salt, marsh, or tide lands, susceptible of one mode of reclamation, and already reclaimed, or in progress of reclamation, and not included in any existing reclamation district, who may desire to

form a reclamation district for the maintenance, protection, and repair of the reclamation works, in, upon, or appertaining to such body of lands, or for the completion of the reclamation thereof, may present a similar petition to that provided in section three thousand four hundred and forty-six. And such proceedings shall thereupon be had in respect to such petition as are provided in respect to other petitions for the formation of reclamation districts; and if the same be approved, it shall be recorded, and the register shall forward his statement, and by-laws shall be adopted, filed, and recorded, and elections called and held in the same manner as is provided in other cases. Such districts, when formed, and the board of trustees thereof, shall have all the rights, immunities, powers, and privileges of other reclamation districts, and the boards of trustees thereof. And assessments may be made, apportioned, and collected for the maintenance, protection, or repair of such reclamation works, or for the completion of such reclamation, in the like manner as is provided for making, apportioning, and collecting assessments in case of other reclamation districts. En. Stats. 1889, 336. Am'd. 1903, 17.

§ 3493. **Dissolution of district.** An action may be brought by the attorney-general in the name of the people of this state, upon his own information or upon the complaint of a private party for the dissolution of a swamp land or reclamation district for a non-user of its corporate powers. In such action the complaint and summons may be served personally upon a majority of the trustees of such district, or upon the president of the board of trustees. If two or more districts have been formed to include all or a portion of the same lands, they may all be joined in the same action. In any such action, when service of summons has been made upon the defendant or defendants, and the defendant or defendants have appeared or default been entered, the court, upon the application of any of the parties, shall thereupon enter an order fixing a day for hearing, which shall not be less than twenty-five days from the date of the order, and shall, also, enter an order directing notice by publication, to be given by the clerk to all persons interested in said district or districts, either as owner or owners of land in said district or dis-

tricts or creditors of said district or districts, or otherwise, requiring them to be and appear on the day fixed for the hearing of said cause, if any they have, why the district or districts named in the complaint, as defendant or defendants, should not be dissolved. The court shall order the notice to be served by publication in some newspaper of general circulation published in the county where the district or districts are situated, for a period of not less than twenty days. On the day fixed for a hearing or some later date to which the cause may be continued, the court may proceed with the hearing, due proof having been first made of the service of the notice by publication for the length of time required by the order. Any person interested in the district or districts that is defendant or defendants shall upon showing his interest be allowed to file an answer or objections to the dissolutions of the defendant or defendants, and shall from the filing of said answer or objections become a party defendant, and be entitled to all the rights of a defendant in any civil action. Any vacancy in the board of trustees heretofore or hereafter caused by resignation, death, removal from the state, or otherwise, may be filled by the board of supervisors of the county in which the district is situated upon the application of any person or persons owning land in the district. The appointment of a trustee or trustees to fill a vacancy or vacancies shall not operate to destroy or remove any cause of action existing before such appointment or appointments were made, against the corporation or district for non-user of its corporate powers; provided, suit be commenced within one year after the passage of this act. If upon the trial of any such action it be determined by the court:

1. That trustees have not been elected for said corporation within five years prior to the passage of this act.

2. That the trustees have not within five years, prior to the passage of this act, exercised any of the powers of a corporation, or performed any of the duties of trustees.

3. That the corporation is not in debt, or if in debt, that all claims are barred by the statute of limitations, the court shall then enter a decree dissolving the corporation, or make such further order as may be deemed necessary to protect the rights of all parties interested. En. Stats. 1889, 335. Am'd. 1897, 193.

§ 3493½. Action to determine validity of assessment. At any time within one year after the filing of the list mentioned in section three thousand four hundred and sixty-two, the board of trustees of the district may, in the name of the district, commence and prosecute an action in the superior court of the county in which the district is situated, or if the district is situated in different counties, then in the superior court of the county in which the greater portion of the district is situated, to determine the validity of the assessment; and in said action any one or more of the owners of land embraced within the district may, at the election of said board of trustees, be made defendants in said action.

The summons shall require the defendant or defendants, if more than one, to answer the complaint within ten days after the service of the summons, if served within the state; and if any one of the defendants upon whom service of the summons shall have been made shall fail to answer the complaint within the time specified in the summons, his default shall be entered by the clerk of the court, and judgment shall thereafter be given and made against him, without costs.

In any action prosecuted under this section, the court shall decree the validity or invalidity of the assessment in accordance with what the court may determine the facts to be.

The plaintiff shall only be required to allege in its complaint that plaintiff is a swamp land or reclamation district, organized and existing under the laws of the state of California, having a board of trustees; that the defendant, or defendants, as the case may be, are the respective owners of certain several tracts of land situated in the district; that within one year next preceding the date of the filing of the complaint, the sum of $—— (naming the full amount of the assessment) was, by commissioners of assessment duly authorized and empowered therefor, legally assessed upon the lands situated within the district, in the manner required by law; that the list required by section three thousand four hundred and sixty was filed in office of the county treasurer of ——— County (designating the county in which the district is situated) on the —— day of ———, —— (specifying the date of such filing), or if the district be situated in different

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counties, then that the original list was filed with the county treasurer of ——— County (designating the county where the petition was filed), and that a copy of said list, certified by the said commissioners of assessment, was filed with the county treasurer of each of the other said counties (respectively designating the name of each county, and specifying the day and date when such copy of said list was filed with the county treasurer thereof; and that the defendant, or defendants, if more than one, dispute and deny the validity of said assessment).

The complaint must also separately describe the tract or tracts of land belonging to each of the defendants in the action, designating the name or names of the owners thereof, respectively; and must state the amount assessed upon and against each of said tracts.

Any one or more persons owning land embraced within the district who shall not have been made a defendant or defendants originally in the action may, at any time before the trial of the action (and without applying to the court for leave), voluntarily submit themselves, respectively, to the jurisdiction of the court in the action, by filing their respective answers therein, and serving copies thereof upon the plaintiff's attorneys; and the judgment thereafter given and made in the action shall be as conclusive and as binding upon each of them, respectively, and their respective executors, administrators, heirs and assigns, as it would have been had they been made defendants in the action originally, and service of the summons had been duly made upon them as original defendants therein. If any defendant contests the validity of the assessment, he shall set forth in his answer wherein the assessment is illegal, and his answer must be verified.

Neither the commencement nor the prosecution of an action under the provisions of this section shall be a bar to or prevent the commencement or the prosecution of an action brought under other provisions of the code for the recovery of money assessed upon the lands situated in any reclamation district; but the judgment given and made in the action brought under the provisions of this section shall be conclusive between the parties thereto as to the validity or invalidity of the assessment; and all actions prosecuted under the provisions of this section shall be

tried without unnecessary delay, and shall have precedence of all other actions, except probate and criminal actions. En. Stats. 1893, 208.

Cal.Rep.Cit. 117, 166; 124, 176; 124, 177.

ARTICLE III.

SCHOOL LANDS.

§ 3494. School lands; price; payment, when to be made.
§ 3495. Affidavit on application to purchase.
§ 3496. Affidavit, when applicant is a female.
§ 3497. Occupants protected.
§ 3498. Applications must not be approved for ninety days.
§ 3499. Contests, how determined.
§ 3500. Applications for other than 16th and 36th sections.
§ 3501. Affidavit, when female is an applicant.
§ 3502. Land warrants received in payment.
§ 3503. Relinquishment of state title.

§ 3494. School lands; price; payment, when to be made. The unsold portion of the five hundred thousand acres granted to the state for school purposes, the sixteenth and thirty-sixth sections, and lands selected in lieu thereof, must be sold at the rate of one dollar and twenty-five cents ($1.25) per acre, in gold coin, payable, twenty per cent of the principal within fifty days from the date of the certificate of location issued to the purchaser; the balance, bearing interest at the rate of seven per cent per annum, in advance, is due and payable within one year after the passage of any act by the legislature requiring such payment, or before, if desired by the purchaser. En. March 12, 1872. Am'd. 1880, 58.

Cal.Rep.Cit. 64, 46; 67, 6; 67, 7; 77, 205; 77, 207; 77, 208.

School lands: Ante, secs. 3398, 3406-3409.

Act providing for applications for purchase: See General Laws, title School Lands.

§ 3495. Affidavit on application to purchase. Any person desiring to purchase any portion not less than the smallest legal subdivision of any of the lands mentioned in section thirty-four hundred and ninety-four, situated in any township which has been surveyed by the United States, must make an affidavit that he is a citizen of the United States, or has filed his intention to become such, a resident of this state of lawful age, that he desires to

purchase such lands (describing the same by legal subdivisions) under the provisions of this title; that there is no occupation of such lands adverse to any that he has, or if there is an adverse occupation the affidavit must show that the township has been sectionized three months, and that the adverse occupant (giving his name) has been in such occupation more than sixty days since the plat was filed in the United States land office; that he desires to purchase the same for his own use and benefit, and for the use or benefit of no other person or persons whomsoever, and that he has made no contract or agreement to sell the same. The affidavit must also state whether the land is or is not suitable for cultivation, and if it is, that the applicant is an actual settler thereon, and that he has not entered any portion of any lands mentioned in section thirty-four hundred and ninety-four, which, together with that now sought to be purchased, exceeds three hundred and twenty acres; but if the land is not suitable for cultivation the affidavit must further state that the applicant has not entered any portion of such lands, which, together with that now sought to be entered, exceeds six hundred and forty acres. Lands unsuitable for cultivation may be sold in quantities not exceeding six hundred and forty acres to any one person, under the restriction other than as to actual settlement prescribed for the sale of cultivable lands. The surveyor-general and register of the land office must make and enforce all necessary rules and regulations to prevent the sale of school lands suitable for cultivation to any person not an actual settler thereon; provided, that any smallest legal subdivision of school lands shall be deemed suitable for cultivation if any part not less than one half of its area will, without artificial irrigation, but with or without the clearing of timber or other growth therefrom, by the ordinary processes of tillage, produce ordinary agricultural crops in average quantity; and provided, that any contest of the applicant's right to purchase, arising from the character of the land as cultivable or otherwise, may be referred to the superior court of the proper county, as in other cases, for determination; and provided further, that no contest of the applicant's right to purchase, arising from adverse occupation, shall be maintained, except by a prior adverse occupant, who shall

have filed an application to purchase the land under the provisions of this section, and no occupation of land by a person other than the applicant shall be an adverse occupation within the meaning of this section, unless such occupation is by a person who is entitled to purchase the same under the provisions hereof, and who files his application therefor within the time prescribed by section thirty-four hundred and ninety-seven of this code. En. March 12, 1872. Am'd. 1880, 109; 1885, 207; 1897, 450.

Cal.Rep.Cit. 51, 111; 55, 398; 67, 6; 68, 270; 68, 507; 68, 508; 68, 511; 71, 211; 71, 321; 72, 30; 72, 31; 76, 120; 76, 177; 76, 188; 76, 189; 77, 37; 77, 398; 78, 516; 82, 141; 82, 517; 82, 572; 82, 574; 82, 650; 90, 44; 90, 47; 101, 521; 101, 522; 102, 419; 111, 399; 111, 400; 136, 495.

Rights of occupant: See post, sec. 3497.

§ 3496. **Affidavit, when applicant is a female.** If the applicant is a female, the affidavit must show that she is entitled to purchase and hold real estate in her own name. En. March 12, 1872.

§ 3497. **Occupants protected.** Every occupant of a sixteenth or thirty-sixth section is protected in his occupancy for three months after the township has been sectionized; and any person settling upon a sixteenth or thirty-sixth section after a township has been sectionized has sixty days after such settlement in which to file the application required in the preceding section. En. March 12, 1872.

Cal.Rep.Cit. 68, 510; 72, 31.

Bona fide settlers preferred purchasers: Stats. 1874, p. 543.

Tract reserved from sale: Stats. 1876, p. 679.

Act to legalize applications approved March 27, 1872: Stats. 1871-2, p. 622.

Act for relief of purchasers of state land: Approved March 27, 1872; Stats. 1871-2, p. 587. Am'd. 1877-8, p. 914.

§ 3498. **Applications must not be approved for ninety days.** All applications, under whatsoever act, filed in the office of the surveyor-general, must be retained ninety days before approval, and must be approved (when there is no conflict) by the surveyor-general, at the expiration of six months, subject, however, to the provisions of

sections three thousand four hundred and six and three thousand four hundred and seven of this code, and all unapproved applications, which have been on file over six months, wherein the approval has not been demanded, and wherein the contest has not been referred to court, or a demand made for an order of reference, as provided in section thirty-four hundred and fourteen of the Political Code shall be null and void. En. March 12, 1872. Am'd. 1885, 139.

Cal.Rep.Cit. 54, 632; 54, 633; 77, 578; 81, 605; 98, 275; 133, 543; 133, 544.

Disposition of contest: Ante, secs. 3414-3417.

§ 3499. Contests, how determined. If two or more claim the same land, the contest must be determined as provided in article I of this chapter; but no person has a right to purchase by reason of any settlement or improvement, unless application is made within the time above prescribed. En. March 12, 1872.

Cal.Rep.Cit. 136, 494.

Contests: Ante, sec. 3414.

§ 3500. Applications for other than 16th and 36th sections. Any false statement contained in the affidavit provided for in section three thousand four hundred and ninety-five, defeats the right of the applicant to purchase the land, or to receive any evidence of title thereto, and, if willfully false, subjects him also to punishment for perjury. Timber lands belonging to this state shall be sold for cash only, and the surveyor-general and register of the state land office must make and enforce all necessary rules and regulations to prevent the sale of or issuance of any evidence of title to any timber lands of this state, except on payment in cash, of the full price fixed therefor by law. En. March 12, 1872. Am'd. 1880, 110; 1885, 208.

Cal.Rep.Cit. 67, 6; 67, 7; 76, 189; 77, 535; 78, 8; 88, 110; 91, 116; 101, 521; 101, 522; 121, 508; 136, 495.

§ 3501. Affidavit, when female is an applicant. If the applicant is a female, the affidavit must also show that she is entitled to purchase real estate in her own name. En. March 12, 1872.

§ 3502. Land warrants received in payment. School land warrants issued by authority of the state are re-

ceivable in payment of the purchase money of any part of the five hundred thousand acres of land granted to the state for school purposes. Such payment must be made to the register and the warrants canceled before the certificate of purchase is issued. En. March 12, 1872.

Cal.Rep.Cit. 77, 207.

Act for presentation and cancellation of unlocated school warrants: See Stats. 1893, p. 181.

§ 3503. Relinquishment of state title. In all cases where any person has purchased any part of a sixteenth or thirty-sixth section from the United States, or shall hereafter make such purchase, or shall be an actual settler on any sixteenth or thirty-sixth section, and entitled to a pre-emption thereto under the laws of the United States, for which lands this state has received indemnity, or will or would be entitled to indemnity under the laws of the United States, the right of the state to such sixteenth and thirty-sixth sections, or parts thereof, are relinquished to the United States for the use of such purchasers and their assignees, and of such pre-emptors. When any person who is in good faith a settler upon any such lands, fails to acquire a title thereto from the United States, he may, within six months after such failure, apply to the state to purchase the same, and his application shall have preference over all other applications for the purchase of such lands. En. Stats. 1873-4, 52.

Act to protect bona fide settlers on public land: See act approved March 23, 1874; Stats. 1873-4, p. 543.

ARTICLE IV.

PAYMENTS, CERTIFICATES OF PURCHASE, AND PATENTS.

§ 3512. Payments, how made.
§ 3513. Failure to pay to work forfeiture.
§ 3514. Certificate of purchase. Evidence of title.
§ 3515. Certificates of purchase may be sold.
§ 3516. Sale to be recorded.
§ 3517. Compensation of recorder.
§ 3518. Duplicate for lost certificate of purchase.
§ 3519. Register to prepare patents, when.
§ 3520. Patent, how executed.
§ 3521. When to issue.
§ 3522. Patents to be recorded and delivered.
§ 3523. Effect of patent issued to deceased persons.

§ 3512. Payments, how made. Whenever any survey or location has been made or approved, the purchaser

must, within fifty days from the date of approval or location, present his copy of the same to the county treasurer of the county in which the land, or some part thereof, is situated, who must receive the amount to be paid, and the fee for the certificate of purchase, indorsing his receipt therefor upon the certificate of location or survey, and returning it to the purchaser. En. March 12, 1872.

Effect of non-payment: See next section.

§ 3513. **Failure to pay to work forfeiture.** In case payment is not made within fifty days, the lands described in the survey or location revert to the state without suit, and the survey or location is void. All subsequent payments must be made to the county treasurer, in like manner, who must indorse the same upon the certificate. The treasurer must direct the purchaser to take the certificate so indorsed to the auditor, who must charge the treasurer with the amount received, and make his check upon the indorsed receipt. En. March 12, 1872.

Annulling certificate for non-payment: See post, sec. 3548.

§ 3514. **Certificate of purchase. Evidence of title.** Whenever the register receives from the county treasurer a statement showing that an applicant for state lands has made the first payment, he must issue to the person entitled thereto a certificate of purchase, showing the class of land purchased, the number of acres, the price per acre, the date of payment, the date from which interest is to be computed, the amount paid, and the amount remaining unpaid, which certificate is prima facie evidence of title. En. March 12, 1872. Am'd. 1873-4, 52.

Cal.Rep.Cit. 78, 8; 90, 156; 96, 209; 98, 403.

Prima facie evidence, definition of: Code Civ. Proc., sec. 1833.

Act respecting payment in full by holders of certificate: See General Laws, title State Lands.

§ 3515. **Certificates of purchase may be sold.** Certificates of purchase, and all rights acquired thereunder, are subject to sale, by deed or assignment, executed and acknowledged before any officer authorized by law to

take acknowledgments of conveyances of real property, or before the register. En. March 12, 1872.

Cal.Rep.Cit. 73, 362; 84, 504; 106, 363; 115, 335..

Certificate of purchase, primary evidence of title: Code Civ. Proc., sec. 1925.

§ 3516. Sale to be recorded. All such sales must, when the deed or assignment is recorded by the county recorder, be reported by him to the register, to be entered in the books of his office. En. March 12, 1872.

Cal.Rep.Cit. 106, 363.

§ 3517. Compensation of recorder. The recorder is entitled to receive from the purchaser, for making such report, a fee of fifty cents. En. March 12, 1872.

§ 3518. Duplicate for lost certificate of purchase. If the owner of a certificate of purchase claims that it has been lost, destroyed, or is beyond his control, the register must take testimony concerning the loss, destruction, or reason why the same is beyond his control. But the party must, before the hearing, make affidavit that he has not sold the said certificate of purchase, or the land described therein, and must publish a notice in some newspaper in the county where the land is situated, or if there is no newspaper published in the county, then in some newspaper of general circulation in the county, for at least four weeks, describing the certificate and the lands for which the same was issued, stating the name of the person to whom the same was issued and the person then claiming to own it, together with the time and place of the hearing. If the register is satisfied of the loss or destruction of the certificate, or that it is beyond the control of the person owning the same, he must issue to the owner thereof a duplicate, with the word "Duplicate" written across the face thereof in red ink. Such duplicate shall have the same force and effect as the original. If there is a contest as to the issuing of a duplicate certificate, the register may hear and determine the same, or may refer it to the proper court, as provided in section thirty-four hundred and fourteen. En. March 12, 1872. Am'd. 1873-4, 53.

Cal.Rep.Cit. 73, 362; 73, 363; 73, 364.

§ 3519. Register to prepare patents, when. Whenever final payment has been made for any tract of land, the

selection of which has been accepted and approved by the United States authorities, or when the tract finally paid for or reclaimed is swamp and overflowed, salt marsh, or tide lands, the register, upon the surrender of the certificate of purchase by the person entitled to the same, must prepare a patent for the land, and send it to the governor, together with a certificate that the laws in relation thereto have been complied with, that payment in full has been made, and that the party named in the prepared patent is entitled to it. En. March 12, 1872.

Cal.Rep.Cit. 73, 362; 81, 89; 112, 315; 115, 335.

§ 3520. Patent, how executed. The patent must then be signed by the governor, attested by the secretary of state, sealed with the great seal of the state, and be countersigned by the register. En. March 12, 1872.

§ 3521. When to issue. No patent must issue until after the expiration of one year from the date of approval of the survey or location by the surveyor-general, nor until the lands are relinquished to the state by authority of the general land office at Washington. Such relinquishment is not required for locations of the sixteenth and thirty-sixth sections in place, or for swamp and overflowed lands, shown to be such by the official surveys made by authority of the United States surveyor-general. En. March 12, 1872.

§ 3522. Patents to be recorded and delivered. The register must record all patents in books to be kept in his office for that purpose, and then deliver them to persons entitled thereto. En. March 12, 1872.

§ 3523. Effect of patent issued to deceased persons. Where a patent for lands is issued in the name of a deceased person, the title is vested in the heirs, devisees, or assignees of such person, in the same manner as if the patent had issued to such person during life. En. March 12, 1872.

ARTICLE V.

SELECTION AND SALE OF UNIVERSITY LANDS.

§ 3533. Regents to select and sell certain lands.
§ 3534. Land agent of university, duty of.
§ 3535. Certain moneys to be paid out.
§ 3536. Purchasers who have not paid up.

§ 3533. Regents to select and sell certain lands. The regents of the university may order the selection of the one hundred and fifty thousand acres of land granted to the state for the use of an agricultural college, and dispose of the same at the price and in the manner fixed by them. En. March 12, 1872.

Cal.Rep.Cit. 68, 476; 71, 116.

Selection and sale of university lands, act concerning: Stats. 1874, p. 356. Am'd. 1880, 36.

§ 3534. Land agent of university, duty of. The land agent of the university, as the agent of the state, must select the lands according to the instructions of the board, and issue certificates of purchase and patents to purchasers who comply with the conditions fixed by the board; and the regents must invest all moneys accruing from the sale of lands as they may deem best, subject to the conditions of the act of congress granting such lands. En. March 12, 1872.

Cal.Rep.Cit. 68, 476; 71, 116; 123, 618.

§ 3535. Certain moneys to be paid out. All moneys, securities, or other properties arising from the sale of the seventy-two sections granted to the state for a seminary of learning, and from the sale of the ten sections granted to the state for the erection of public buildings, must be paid out of the state treasury on the order of the regents of the university. En. March 12, 1872.

§ 3536. Purchasers who have not paid up. All persons who have purchased any portion of either of the grants mentioned in the preceding section, and who have not paid in full therefor, must be included in the delinquent list, and the district attorney must proceed against such delinquents as provided in sections 3547 and 3548, and the provisions of sections 3548 to 3556, inclusive, are made applicable to such proceedings. If such lands revert to the state, they pass under the control of and may

be sold by the board of regents of the university. En. March 12, 1872.

ARTICLE VI.

PROCEEDINGS AGAINST DELINQUENT PURCHASERS.

§ 3546. Register to furnish statement of delinquents.
§ 3547. Delinquent purchasers, and proceedings against.
§ 3548. Same.
§ 3549. Service of summons.
§ 3550. Copy of decree to be filed.
§ 3551. When purchaser may be restored to rights.
§ 3552. When judgment binds assignee.
§ 3553. Compensation of district attorney.
§ 3554. After filing decree, land subject to sale.
§ 3555. Costs of suits taxed and collected.
§ 3556. Subsequent purchasers may defend, etc.

§ 3546. Register to furnish statement of delinquents. The register must, on the first day of May of each year, forward to the district attorney of each county a statement embracing all the lands in the county upon which payments have not been made, which statement must show the name of the purchaser, the number and date of the survey or location, and of the certificate of purchase, the amount paid, the amount unpaid, and the amount then due. No lands within any reclamation district must be embraced in such statement after the receipt by the register of the certificate of the board of supervisors that works of reclamation have been commenced. En. March 12, 1872.

Cal.Rep.Cit. 58, 125; 131, 549.

§ 3547. Delinquent purchasers, and proceedings against. Upon receipt of the delinquent list, the district attorney must add thereto a notice that if the amount due is not paid in fifty days after the date thereof he will commence suit to foreclose the interest of purchasers in the lands, and must publish the list and notice for four weeks immediately following the date of the notice, in a newspaper published in the county, or if there is no newspaper published therein, then he must post copies of the same in at least five public places in the county. En. March 12, 1872.

§ 3548. Same. After the expiration of the fifty days, he must, in the name of the people of the state of California, commence actions in the superior court against

all purchasers, or holders of certificates of purchase, who have not either paid the amount due, together with the cost of publication, or surrendered the title to the state, as provided in section three thousand five hundred and seventy, to obtain a judgment of foreclosure of the interest of the purchaser, or assignee of the purchaser in the land, and to annul the certificate of purchase. En. March 12, 1872. Am'd. 1880, 110.

Cal.Rep.Cit. 106, 363; 115, 333.

Compare: Ante, secs. 3441-3498.

§ 3549. **Service of summons.** Service of the summons in such action may be made by publication in some newspaper published in the county for four weeks, or if no newspaper is published in the county, then by posting one copy of the summons for four weeks at the courthouse door of the county, and two copies in public places in the township where the land is situated. En. March 12, 1872.

Cal.Rep.Cit. 101, 573; 103, 453; 107, 544; 107, 545.

§ 3550. **Copy of decree to be filed.** Twenty days after the entry of judgment the district attorney must file in the office of the register, and in the recorder's office of the county in which the land is situated, certified copies thereof. En. March 12, 1872.

Cal.Rep.Cit. 115, 333.

§ 3551. **When purchaser may be restored to rights.** The holder of the certificate of purchase may, at any time before such filing, pay to the sheriff the amount due the state, and the costs of suit that have accrued up to the time of payment; whereupon the district attorney must dismiss the suit or vacate the judgment, and the purchaser or holder of the certificate of purchase is restored to his rights in the premises. En. March 12, 1872.

§ 3552. **When judgment binds assignee.** A judgment against the purchaser binds the assignee, unless the notice of the assignment was filed with the register before the commencement of the action. En. March 12, 1872.

§ 3553. **Compensation of district attorney.** The district attorney is entitled to receive ten dollars for each suit brought, to be taxed as costs. En. March 12, 1872.

Cal.Rep.Cit. 71, 120; 131, 549; 131, 551; 135, 516.

§ 3554. Afer filing decree, land subject to sale. After judgment foreclosing the interest of the purchaser or the holder of the certificate has been entered, and the certified copies filed, the land is again subject to entry and sale. En. March 12, 1872.

Cal.Rep.Cit. 71, 120; 106, 363.

§ 3555. Costs of suits taxed and collected. Upon the rendition of a judgment foreclosing the interest of the purchaser or of his assigns in the land, and annulling the certificate of purchase, judgment for costs must be entered against the defendant; but if execution issued thereon is returned not satisfied, the judgment and costs must be paid from the principal or interest paid by the purchaser at the time of the original location. En. March 12, 1872.

Act to enable purchasers to redeem the land: See act approved March 7, 1881; Stats. 1881, p. 65.

§ 3556. Subsequent purchasers may defend, etc. Any person having a conveyance of the whole or any portion of the lands described in any certificate of purchase, to annul which suit has been commenced, but to whom the certificate has never been surrendered, may defend such action; and if it appears to the court that he is entitled to any portion of the lands described, and the holder of such certificate does not pay the amount due, the court must order the certificate annulled and a new one to issue to such person upon payment into court by him of the amount due the state upon the whole tract; and such person is thereupon entitled to two certified copies of the decree, one of which he must file in the county recorder's office, and the other with the register. En. March 12, 1872.

Cal.Rep.Cit. 131, 549.

ARTICLE VII.

MISCELLANEOUS PROVISIONS RELATING TO PUBLIC LANDS.

§ 3566. Duplicates for lost or defaced land warrants.
§ 3567. Same.
§ 3568. Same.
§ 3569. Same.
§ 3570. Abandonment of entry or location, how made.
§ 3571. If lands sold are not the property of the state.
§ 3572. Same.
§ 3573. Certain applications made valid.
§ 3574. Fees on application.

§ 3566. Duplicates for lost or defaced land warrants. Any person making application for a duplicate school land warrant, in lieu of one lost or destroyed, must make proof by affidavit to the register that he is the owner of such warrant, that it has not been located, and of the facts establishing the loss or destruction thereof, and must file with the register a bond, with two or more sureties, to be approved by the register, payable to the state of California, in double the value of the warrant, conditioned that the warrant will not be presented for location. En. March 12, 1872.

§ 3567. Same. When for want of a proper acknowledgment of an assignment of the original land warrant, or partial destruction or defacement thereof, or for any other cause, it cannot be made available, the applicant must prove that he is the owner of the warrant, and that it has not been located, and must file the original for cancellation with the register. En. March 12, 1872.

§ 3568. Same. The register must certify that the applicant is entitled to a duplicate warrant in lieu of the one proved to have been lost or destroyed or presented for cancellation, and upon presentation of such certificate to the governor he must deliver to the applicant a duplicate warrant bearing the same number as the original warrant, with the word "Duplicate" written across the face thereof, which duplicate has the same force and effect as the original. En. March 12, 1872.

§ 3569. Same. The register must not give the certificate until he is satisfied that the original has not been located, or, if located, that the lands have not been and will not be charged by the federal government as part

of the five hundred thousand acres of land granted to this state. En. March 12, 1872.

§ 3570. Abandonment of entry or location, how made. Whenever a purchaser of land upon credit desires to abandon the location or entry made by him, he may do so by conveyance of his title to the state and surrender of the certificate of purchase, or, if it has been lost, by filing an affidavit of that fact with the register. En. March 12, 1872.

Forfeiture for non-payment of installments: See ante, sec. 3513.

§ 3571. If lands sold are not the property of the state. If any land sold is not the property of the state the holder of the certificate of purchase or patent may receive in exchange therefor from the register a certificate showing the amount paid and the class of land upon which the payment was made. En. March 12, 1872.

Cal.Rep.Cit. 57, 558; 58, 248; 63, 248; 63, 249; 74, 399.

§ 3572. Same. If the land sold was swamp and overflowed the county auditor of the county in which the land is situated must, upon the surrender to him of the certificate mentioned in section three thousand five hundred and seventy-one, draw his warrant in favor of the person surrendering such certificate for the amount therein specified, upon the treasurer of the county, who must pay the same out of the swamp and overflowed land fund of the district in which the land is situated. If the land sold was not swamp and overflowed, the controller of state, upon the surrender to him of such certificate, must draw his warrant in favor of the person surrendering the same, for the amount therein specified, upon the treasurer of state, who must pay the same out of the fund into which the purchase money was paid. En. March 12, 1872. Am'd. 1877-8, 63.

Cal.Rep.Cit. 63, 249; 74, 399.

§ 3573. Certain applications made valid. All applications made prior to March twenty-fourth, eighteen hundred and seventy, for the purchase of lands under the provisions of "An act to provide for the management and sale of lands belonging to the state," approved March twenty-eighth, eighteen hundred and sixty-eight, if there

was not, on the twenty-fourth day of March, eighteen hundred and seventy, two or more applicants for the purchase of, or conflicts between claimants of, the same land, where the purchase has been completed and patent issued, are valid, although the affidavits on which such applications were based are neither in form nor substance in compliance with the provisions of such act. En. March 12, 1872. Am'd. 1893, 116.

Cal.Rep.Cit. 99, 460.

§ 3574. **Fees on application.** Each application for lands must be accompanied by a fee of five dollars, and no application shall be received, filed, or noted in any way until such fee is paid. The surveyor-general shall charge the same fees as are allowed the register for like services; and all fees collected by either the surveyor-general or register shall be paid into the state treasury on the first Monday of each and every month, and placed to the credit of the general fund; and said officers shall, on the first Monday of each month, make a written report to the state controller, stating the amount of fees so paid, together with the sources from which they were derived, and the several amounts, by items. The surveyor-general and register, whenever it may be necessary, may purchase such maps and records as the needs of their office may demand, but all claims against the state, authorized by this section, shall be certified to the state board of examiners, and if the same be allowed, the board shall direct the controller of state to draw his warrant in payment of the same, payable out of the general fund. En. March 12, 1872. Am'd. 1873-4, 53; 1875-6, 57.

Cal.Rep.Cit. 55, 807; 61, 55.

CHAPTER II.

THE YOSEMITE VALLEY AND MARIPOSA BIG TREE GROVE.

§ 3584. Commissioners to manage.
§ 3585. Guardian and his compensation.
§ 3586. Report of commissioners.

§ 3584. **Commissioners to manage.** The governor of this state and the eight other commissioners appointed by the governor on the twenty-eighth day of September, eighteen hundred and sixty-four, in accordance with the

terms of an act of congress entitled an act authorizing a grant to the state of California of the Yosemite Valley and of the land embracing the Mariposa Big Tree Grove, approved June thirteenth, eighteen hundred and sixty-four, constitute a board to manage such premises. Any vacancy occurring in the board may be filled by the appointment of the governor. The commissioners are known as "The Commissioners to manage the Yosemite Valley and the Mariposa Big Tree Grove," and under such name they and their successors may sue and be sued and have full power to manage and administer the grant made and the trust created by the act of congress, and to make and adopt all rules, regulations, and by-laws for their own government and the government, improvement and preservation of such premises. En. March 12, 1872.

Commissioners, nine in number, are civil executive officers: Ante, sec. 343.

Special laws relating to Yosemite Valley: See General Laws, title Yosemite Valley.

§ 3585. Guardian and his compensation. They may appoint a guardian of the premises, removable at their pleasure, who must perform such duties as they may prescribe, and may receive such compensation as they may fix, not to exceed five hundred dollars per annum. En. March 12, 1872.

§ 3586. Report of commissioners. The commissioners must make a report of their proceedings and of the condition of the premises through the governor, to the legislature, at every regular session thereof. En. March 12, 1872.

CHAPTER III.

STATE BURYING GROUNDS.

§ 3596. Title vested in state. Who may be interred.
§ 3597. Duties of trustees.

§ 3596. Title vested in state. Who may be interred. The fee to the state burying ground, in the city cemetery of the city of Sacramento, is in the people of the state of California, and there may be interred therein any person who, at the time of his death, was a state officer or a member of the senate or assembly. En. March 12, 1872.

§ 3597. Duties of trustees. The board of trustees of the state burying ground have the control and management of the grounds and the expenditure of all moneys appropriated for the maintenance or improvement thereof. En. March 12, 1872.

Trustees of state burying ground, number of: Ante, sec. 343. Are civil executive officers: Ante, sec. 343. Are appointed by governor with consent of senate: Ante, sec. 368.

Part 3

TITLE IX.

REVENUE.

Chapter I. Property Liable to Taxation, §§ 3607-3611.
II. Definitions, § 3617.
III. Assessment of Property, §§ 3627-3671.
IV. Equalization of Taxes, §§ 3672-3705.
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VI. Duties of the Auditor in Relation to Revenue, §§ 3727-3739.
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X. Settlements with the Controller and Payments into State Treasury, §§ 3865-3880.
XI. Miscellaneous Provisions, §§ 3881-3900.

CHAPTER I.

PROPERTY LIABLE TO TAXATION.

§ 3607. Property subject to taxation.
§ 3608. Shares of stock in corporations.
§ 3609. Shares of national banks.
§ 3610. Shares of national banks.
§ 3611. Exemption of church property.

§ 3607. Property subject to taxation. All property in this state, not exempt under the laws of the United States, excepting fruit and nut bearing trees under the age of four years from the time of planting in orchard form, and grapevines under the age of three years from the time of planting in vineyard form, growing crops,

property used exclusively for public schools, free public libraries, and free museums, and such as may belong to the United States, this state, or to any county or municipal corporation within this state, is subject to taxation, as in this code provided; but nothing in this code shall be construed to require or permit double taxation. En. March 12, 1872. Am'd. 1880, 5; 1881, 56; 1895, 306.

Cal.Rep.Cit. 62, 115; 67, 111; 99, 675; 103, 193; 134, 480; 137, 524.

What objects may be taxed: See post, sec. 3617.

All property subject to taxation.—"Real estate" includes what: See post, sec. 3617.

"Property" defined: See post, sec. 3617.

Property subject to taxation, meaning of term property in this connection: Sec. 3617, subd. 1.

Act establishing tax on collateral inheritance: See General Laws, title Taxation.

Act imposing tax on issue of certificates of stock, repealed: See General Laws, title Taxation.

Exemptions in this section, growing crops. The exemptions here enumerated conform to Const. Cal., art. XIII, sec. 1.

Public schools. Constitutional authority for this exemption: Art. XIII, sec. 1; and see ante, secs. 1817-1861.

The taxing of the property of a corporation, as well as the shares of the stock, is expressly declared to be double taxation: Post, sec. 3608.

§ 3608. Shares of stock in corporations. Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent; and the assessment and taxation of such shares, and also all the corporate property, would be double taxation. Therefore, all property belonging to corporations, save and except the property of national banking associations not assessable by federal statute, shall be assessed and taxed. But no assessment shall be made of shares of stock in any corporation, save and except in national banking associations, whose property, other than real estate, is exempt from assessment by federal statute. En. Stats. 1881, 56. Am'd. 1899, 96.

Cal.Rep.Cit. 62, 115; 62, 117; 62, 118; 116, 22; 116, 23; 116, 28; 116, 31.

§ 3609. Shares of national banks. The stockholders in every national banking association doing business in this state, and having its principal place of business located in this state, shall be assessed and taxed on the value of their shares of stock therein; and said shares shall be valued and assessed as is other property for taxation, and shall be included in the valuation of the personal property of such stockholders in the assessment of the taxes at the place, city, town, and county where such national banking association is located, and not elsewhere. whether the said stockholders reside in said place, city, town, or county, or not; but in the assessment of such shares, each stockholder shall be allowed all the deductions permitted by law to the holders of moneyed capital in the form of solvent credits, in the same manner as such deductions are allowed by the provision of paragraph six of section thirty-six hundred and twenty-nine of the Political Code of the state of California. In making such assessment to each stockholder, there shall be deducted from the value of his shares of stock such sum as is in the same proportion to such value as the total value of its real estate and property exempt by law from taxation bears to the whole value of all the shares of capital stock in said national bank. And nothing herein shall be construed to exempt the real estate of such national bank from taxation. And the assessment and taxation of such shares of stock in said national banking associations shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state. En. Stats. 1899, 96.

§ 3610. Shares of national banks. The assessor charged by law with the assessment of said shares shall, within ten days after he has made such assessment, give written notice to each national banking association of such assessment of the shares of its respective shareholders; and no personal or other notice to such shareholders of such assessment shall be necessary for the purpose of this act. And in case the tax on any such stock is unsecured by real estate owned by the holder of such stock, then the bank in which said stock is held shall become liable therefor; and the assessor shall collect the same from said bank, which may then charge the amount of the tax so collected

to the account of the stockholder owning such stock, and shall have a lien, prior to all other liens, on his said stock, and the dividends and earnings thereof, for the reimbursement to it of such taxes so paid. En. Stats. 1899, 97.

§ 3611. Exemption of church property. All buildings, and so much of the real property on which they are situated as may be required for the convenient use and occupation of said buildings, when the same are used solely and exclusively for religious worship, shall be free from taxation; provided, that no building so used which may be rented for religious purposes and rent received by the owner therefor shall be exempt from taxation. That any person claiming property to be exempt from taxation under this section shall make a return thereof to the assessor annually, the same as property is listed for taxation, and shall accompany the same by an affidavit showing that the building is used solely and exclusively for religious worship, and that the described portion of the real property claimed as exempt is required for the convenient use and occupation of such building, and that the same is not rented for religious purposes and rent received by the owner therefor. En. Stats. 1903, 21.

CHAPTER II.

DEFINITIONS.

§ 3617. Definition of terms.

§ 3617. Definition of terms. Whenever the terms mentioned in this section are employed in this act, they are employed in the sense hereafter affixed to them: 1905 192

First—The term "property" includes moneys, credits, bonds (except of railroad or quasi-public corporations), stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership.

Second—The term "real estate" includes:

1. The possession of, claim to, ownership of, or right to the possession of land.

2. All mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations, growing or being on the lands of the United States, and all rights and privileges appertaining thereto.

3. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, when land is pledged for the payment and discharge thereof, shall, for the purpose of assessment and taxation, be deemed and treated as an interest in the land so pledged.

4. Improvements.

Third—The term "improvements" includes:

1. All buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land, except telephone and telegraph lines.

2. All fruit, nut-bearing, or ornamental trees and vines, not of natural growth, excepting fruit and nut-bearing trees under four years of age, and grapevines under three years of age.

Fourth—The term "personal property" includes every thing which is the subject of ownership, not included within the meaning of the term "real estate" or "improvements."

Fifth—The terms "value" and "full cash value" mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor.

Sixth—The term "credits" means those solvent debts, not secured by mortgage or trust deed, owing to the person, firm, corporation, or association assessed. The term "debt" means those unsecured liabilities owing by the person, firm, corporation, or association, assessed to bona fide residents of this state, or firms, associations, or corporations doing business therein; but credits, claims, debts, and demands due, owing, or accruing for or on account of money deposited with savings and loan corporations, shall, for the purpose of taxation, be deemed and treated as an interest in the property of such corporation, and shall not be assessed to the creditor or owner thereof. En. March 12, 1872. Am'd. 1873-4, 143; 1875-6, 58; 1877-8, 64; 1880, 5; 1881, 56; 1889, 203; 1895, 306.

Cal.Rep.Cit. 58, 146; 62, 115; 65, 460; 83, 449; 97, 220; 97, 221; 97, 222; 97, 223; 104, 622; 109, 402; 121, 384; 128, 596; 128, 605; 137, 514; 137, 526. Subd. 3—123, 75. Subd. 6—109, 398; 113, 400.

Property: See Const. Cal., art. XIII, sec. 1.

Stock: See ante, sec. 3608.

How mortgages are to be assessed: See post, sec. 3627.

CHAPTER III.

ASSESSMENT OF PROPERTY.

§ 3627. Property, how assessed.
§ 3628. Franchises. Other taxable property.
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§ 3630. Blank forms of statement, and affidavit therefor.
§ 3631. Statement to be filled out and returned to assessor.
§ 3632. Power of assessor to require affidavit and testimony.
§ 3633. Property of person neglecting or refusing to give statement, how assessed.
§ 3634. Sufficient description and survey of property, how obtained by assessor by aid of court.
§ 3635. Assessment of unknown or absent owners of property.
§ 3636. Same.
§ 3637. Property situated in another county.
§ 3638. Consigned property.
§ 3639. Trustees, guardians, executors, and administrators.
§ 3640. Enrollment of persons subject to poll tax. (Repealed.)
§ 3641. Property of firm or corporation assessed where situated.
§ 3642. Undisturbed property of deceased persons.
§ 3643. Ferries and toll bridges, where assessed.
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§ 3649. Property not taxed in previous year.
§ 3650. Property, how listed.
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§ 3652. Affidavit to completed assessment book.
§ 3653. Copy of assessment book to be furnished cities and towns.
§ 3654. Delivery of assessment book, etc., to clerk of supervisors. Notice of meeting to equalize assessments.
§ 3655. Statement by assessor to state board of equalization, to show what.
§ 3656. Penalty for failure of assessor to complete assessment book and transmit statement.
§ 3657. Persons claiming ownership of property and desiring to be assessed.
§ 3658. Supervisors to furnish assessor with maps, books, etc.
§ 3658a. Official maps; assessment by reference to.
§ 3659. Duty of surveyor-general in relation to lands sold state.
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§ 3661. District attorney to prosecute assessor for unpaid taxes, when.
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§ 3667. Notice to controller of county rate of taxation.
§ 3668. Publication by controller.
§ 3669. Certain taxes to be paid state treasurer.
§ 3670. Controller to sue for delinquent taxes.
§ 3671. Basis of taxation for counties.

§ 3627. Property, how assessed. All taxable property must be assessed at its full cash value. Land and improvements thereon shall be separately assessed. Cultivated

uncultivated land of the same quality, and similarly situated, shall be assessed at the same value. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby, except as to railroad and other quasi-public corporations. In case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situated. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured. If the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and, to the extent of such payment, a full discharge thereof. If any such security or indebtedness shall be paid by any such debtor or debtors after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year; and every contract by which a debtor is obliged to pay any tax or assessment on money loaned, or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void. En. March 12, 1872. Am'd. 1880, 6; 1881, 57.

Cal.Rep.Cit. 67, 87; 68, 499; 72, 36; 88, 449; 96, 635; 96, 636; 96, 637; 120, 340; 121, 384.

"Improvements" defined: See ante, sec. 3617, subd. 4. Full cash value defined: Ante, sec. 3617, subd. 5. Lands, provision for assessment of, conforms to Const. Cal., art. XIII, sec. 2.

Mortgages and similar obligations, provision in section for assessment of, nearly identical with Const. Cal., art. XIII, sec. 4, except last clause, which is taken from section 5 of same article of constitution.

Taxation, acts in relation to: See General Laws, title Taxation.

§ 3628. Franchises. Other taxable property. The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this state shall be assessed by the state board of equalization, as hereinafter provided for. Other franchises, if granted by the authorities of a county, city, or city and county, must be assessed in the county, city, or city and county within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business. All other taxable property shall be assessed in the county, city, or city and county, town, township, or district in which it is situated. Land shall be assessed in parcels or subdivisions not exceeding six hundred and forty acres each; and tracts of land containing more than six hundred and forty acres, which have been sectionized by the United States government, shall be assessed by sections or fractions of sections. Lands sold by the state for which no patent has been issued shall be assessed the same as other lands, but the owner shall be entitled to a deduction from such assessed valuation in the amount due the state as principal upon the purchase price. The assessor must, between the first Mondays in March and July of each year, ascertain the names of all taxable inhabitants, and all the property in his county subject to taxation, except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was, at twelve o'clock meridian, of the first Monday in March next preceding; but no mistake in the name of the owner or supposed owner of real property shall render the assessment thereof invalid. In assessing solvent credits, not secured by mortgage or trust deed, a reduction therefrom shall be made of debts due to bona fide residents of this state. En. March 12, 1872. Am'd. 1880, 7; 1895, 307.

Cal.Rep.Cit. 53, 666; 55, 367; 58, 137; 63, 527; 66, 19; 66, 20; 66, 21; 66, 22; 68, 561; 69, 539; 84, 302; 86, 124; 87, 502; 90, 465; 93, 473; 96, 636; 99, 38; 99, 675; 121, 660; 129, 95; 130, 131; 131, 82; 131, 83; 131, 359.

Franchises subject to taxation: See sec. 3617, subd. 1.

Railroad property, assessment of: See Const. Cal., art. XIII, sec. 10.

Act as to the manner of assessing railroads: See post, secs. 3664, 3665.

Place of assessment: See post, secs. 3641-3646. Provision for, follows Const. Cal., art. XIII, sec. 10.

Assessment of lands: Provision follows Const. Cal., art. XIII, sec. 8.

Corporation and firm names: See post, sec. 3641.

§ 3629. Contents of statement required by assessor. He must exact from each person a statement, under oath, setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control, at twelve o'clock M. on the first Monday in March. Such statement shall be in writing, showing separately:

1. All property belonging to, claimed by, or in the possession or under the control or management of such person.

2. All property belonging to, claimed by, or in the possession or under the control or management of any firm of which such person is a member.

3. All property belonging to, claimed by, or in the possession or under the control or management of any corporation of which such person is president, secretary, cashier, or managing agent.

4. The county in which such property is situated, or in which it is liable to taxation, and (if liable to taxation in the county in which the statement is made) also the city, town, township, school district, road district, or other revenue districts in which it is situated.

5. An exact description of all lands in parcels or subdivisions, not exceeding six hundred and forty acres each, and the sections and fractional sections of all tracts of land containing more than six hundred and forty acres, which have been sectionized by the United States government, improvements and personal property, including all vessels, steamers, and other watercraft; and all taxable state, county, city, or other municipal or public bonds, and the taxable bonds of any person, firm, or corporation, and deposits of money, gold dust, or other valuables, and the names of the persons with whom such deposits are made, and the places in which they may be found; all mortgages, deeds of trust, contracts, and other obligations by which a debt is secured and the property in the county affected thereby.

6. All solvent credits, unsecured by deed of trust, mortgage, or other lien on real or personal property, due or owing to such person, or any firm of which he is a member, or due or owing to any corporation of which he is president, secretary, cashier, or managing agent, deducting from the sum total of such credits such debts only, unsecured by trust deed, mortgage, or other lien on real or personal property, as may be owing by such person, firm, or corporation, to bona fide residents of this state. No debt shall be so deducted unless the statement shows the amount of such debt as stated under oath in aggregate; provided, in case of banks the statement is not required to show the debt in detail, or to whom it is owing; but the assessor shall have the privilege of examining the books of such banks to verify such statement. Whenever one member of a firm, or one of the proper officers of a corporation, has made a statement showing the property of the firm, or corporation, another member of the firm, or another officer, need not include such property in the statement made by him; but his statement must show the name of the person or officer who made the statement in which such property is included. En. March 12, 1872. Am'd. 1880, 7; 1881, 58.

Cal.Rep.Cit. 46, 505; 58, 138; 61, 103; 62, 117; 63, 527; 64, 483; 65, 107; 67, 626; 68, 15; 71, 207; 73, 51; 80, 88; 83, 570; 85, 200; 85, 201; 97, 221; 112, 596; 112, 597; 115, 78; 131, 39; 132, 76. Subd. 6 — 97, 220; 116, 29; 121, 884.

Sworn statement required by section, pursuant to Const. Cal., art. XIII, sec. 8.

Refusing to give statement: See post, sec. 3633.

Subd. 4. Revenue district wherein property situated is place of assessment: See ante, sec. 3628.

Subd. 5. Lands, assessment of: Ante, sec. 3627.

Vessels, steamers, and other watercraft, where taxed: See post, secs. 3644-3646.

Mortgages and like obligations, how assessed: See ante, sec. 3627.

Subd. 6. Solvent credits, definition of terms "credits" and "debts": Ante, sec. 3617, subd. 6. Deduction of debts due bona fide residents: See ante, sec. 3628.

§ 3630. Blank forms of statement, and affidavit therefor. The board of supervisors must furnish the assessor with blank forms, as prescribed by the state board of equaliza-

tion, of the statements provided for in the preceding sections affixing thereto an affidavit, which must be substantially as follows:

"I, —— ———, do swear that I am a resident of the county of (naming it); that the above list contains a full and correct statement of all property subject to taxation which I, or any firm of which I am a member, or any corporation, association, or company of which I am president, cashier, secretary, or managing agent, owned, claimed, possessed, or controlled, at twelve o'clock M., on the first Monday in March last, and which is not already assessed this year; and that I have not, in any manner whatsoever, transferred or disposed of any property, or placed any property out of said county or my possession for the purpose of avoiding any assessment upon the same, or of making this statement; and that the debts therein stated as owing by me are owing to bona fide residents of this state, or to firms or corporations doing business in this state."

The affidavit to the statement on behalf of a firm or corporation must state the principal place of business of the firm or corporation, and in other respects must conform substantially to the preceding form. En. March 12, 1872. Am'd. 1873-4, 143; 1880, 9; 1895, 308.

Cal.Rep.Cit. 68, 15; 85, 200.

§ 3631. Statement to be filled out and returned to assessor. The assessor may fill out the statement at the time he presents it, or he may deliver it to the person and require him, within an appointed time, to return the same to him, properly filled out. En. March 12, 1872.

§ 3632. Power of assessor to require affidavit and testimony. Every assessor shall have power:

1. To require any person found within such assessor's respective county to make and subscribe an affidavit, giving his name, place of residence or place of business and whether he is the owner of any taxable property;

2. To subpœna and examine any person in relation to any statement furnished him, or which discloses property which is assessable in his respective county that may be stored with, in possession of, or controlled by such person. And he may exercise this power in any county where the persons whom he desires to examine may be found, but

shall have no power to require such persons to appear before him in any other county than that in which the subpœna is served upon them. Every person who shall refuse to furnish the statement hereinbefore required in this chapter, or to make and subscribe such affidavit respecting his name and place of residence, or to appear and testify when requested to do so by the assessor, as above provided, shall, for each and every refusal, and as often as the same is repeated, forfeit to the people of the state the sum of one hundred dollars, in gold coin of the United States, to be recovered by action brought in their name by the respective assessor in any police or justice's court. In case such affidavit shall show the residence of the person making the same to be in any county other than that in which it is taken, or the statement shall disclose property in any county other than that in which it is made, the assessor shall, in the respective case, file the affidavit or statement in his office, and transmit a copy of the same, certified by him, to the assessor of the county in which such residence or property is therein shown to be. One half of all moneys recovered by any assessor under the provisions of this section must by him be paid into the treasury of his county, and the other half may be retained by the assessor for his own use. En. March 12, 1872. Am'd. 1873-4, 144; 1901, 647.

Cal.Rep.Cit. 85, 200; 85, 201; 123, 56; 137, 513.

§ 3633. Property of person neglecting or refusing to give statement, how assessed. If any person, after demand made by the assessor, neglects or refuses to give, under oath, the statement herein provided for, or to comply with the other requirements of this title, the assessor must note the refusal on the assessment book, opposite the name of such person, and must make an estimate of the value of such property of such person, and the assessor must transmit on or before the first day of July of each year to the board of supervisors a verified report in writing, separate from the assessment roll, containing a complete list of all persons who refuse or neglect to furnish a statement of their property as herein provided for, or to comply with the requirements of this title, the amount of the assessment upon the property of such persons, with a statement of the particular facts, if any, upon which the asessment has been made, and the valua-

tion of the property so assessed ascertained. The board of supervisors must investigate and inquire into all assessments and values so fixed by the assessor, as prescribed by this section, and for that purpose must require each taxpayer affected by such assessment and valuation to make a statement under oath, within ten days from making an order requiring such statement, setting forth specifically, all the property owned or controlled, or in the possession of such taxpayer on the first Monday of March. If any taxpayer, after demand made by the board of supervisors, shall neglect or refuse to make and deliver to the said board of supervisors the statement, duly verified, herein provided for, or to comply with the other requirements of this title, the said board of supervisors, sitting as a county board of equalization, must increase such assessment and valuation to such an amount as the said board shall deem just; but the value fixed by the assessor must not, in any case, be reduced by the board of supervisors. En. March 12, 1872. Am'd. 1897, 64.

Cal.Rep.Cit. 61, 103; 65, 107; 67, 626; 71, 207; 75, 174; 83, 570; 123, 56; 131, 359.

§ 3634. Sufficient description and survey of property, how obtained by assessor by aid of court. When the assessor has not received from the owner of a tract of land the statement required by section three thousand six hundred and twenty-nine, or when such statement does not sufficiently describe a tract of land to enable the assessor to assess the same as required by law, and the owner or his agent, or in case they cannot be found or are unknown, the person in possession thereof, neglects for ten days after demand by the assessor to furnish said assessor with such description, the assessor shall cite such owner, or agent, or person in possession, to appear before the superior court of the county wherein such land is situated, within five days after service of such citation, and the said superior court shall, upon the day named in such citation, to the exclusion of all other business, proceed to hear the return and answer of the said owner, or agent, or person in possession, to the said citation; and if the court shall find that the land has not been surveyed or divided into subdivisions of six hundred and forty acres, or less, so that each part or parcel may be described by metes and bounds, then the court shall, by order duly

entered in open court, direct the county surveyor to make a survey, and define the boundaries and location of said land by parcels or subdivisions not exceeding six hundred and forty acres each, and deliver the same to the county assessor. The expense of making such survey and description by the county surveyor shall be a lien upon the land, and shall when approved by the said superior court, be certified by said court to the tax collector of the county where the land is situated, and be added to the taxes upon said land, and be collected as other taxes are collected. En. March 12, 1872. Am'd. 1880, 9.

Cal.Rep.Cit. 73, 51; 85, 200; 137, 513.

Description of lands in parcels or subdivisions, required in statement by: Ante, sec. 3629, subd. 5.

§ 3635. Assessment of unknown or absent owners of property. If the owner or claimant of any property, not listed by another person, is absent or unknown, the assessor must make an estimate of the value of such property. En. March 12, 1872.

Cal.Rep.Cit. 53, 666.

Absent owner, known or unknown, how assessed: Post, sec. 3636.

§ 3636. Same. If the name of the absent owner is known to the assessor, or if it appears of record in the office of the county recorder where the property is situated, the property must be assessed to such name. If unknown to the assessor, and if it does not appear of record as aforesaid, the property must be assessed to unknown owners. En. March 12, 1872. Am'd. 1891, 107.

Cal.Rep.Cit. 53, 666; 55, 367; 59, 51; 64, 605; 66, 21; 80, 395; 131, 83.

Assessment book: See post, sec. 3650.

§ 3637. Property situated in another county. The assessor, as soon as he receives a statement of any taxable property situated in another county, must make a copy of such statement for each county in which the same is situated, and transmit the same, by mail or express, to the assessor of the proper county, who must assess the same as other taxable property therein. En. March 12, 1872.

Migratory live stock: See General Laws, title Taxation.

Assessment of animals: See General Laws, title Taxation.

§ 3638. Consigned property. All personal property consigned for sale to any person within this state, from any place out of this state, or from other county or counties in this state, must be assessed in the county where the property is situated, as other property. En. March 12, 1872. Am'd. 1901, 648.

§ 3639. Trustees, guardians, executors, and administrators. When a person is assessed as agent, trustee, bailee, guardian, executor, or administrator, his representative designation must be added to his name and the assessment entered on a separate line from his individual assessment. En. March 12, 1872.

Cal.Rep.Cit. 62, 116; 93, 471.

§ 3640. Enrollment of persons subject to poll tax. (Repealed.) En. March 12, 1872. Am'd. 1880, 10. Rep. 1881, 59. En. Stats. 1895, 308. Rep. 1901, 648.

Cal.Rep.Cit. 58, 137; 58, 138; 58, 140; 62, 117; 63, 471; 63, 527; 64, 507; 116, 26; 123, 155.

§ 3641. Property of firm or corporation assessed where situated. The property of every firm and corporation must be assessed in the county where the property is situate, and must be assessed in the name of the firm or corporation. En. March 12, 1872.

Cal.Rep.Cit. 64, 507.

County where property situated, assessment in: See ante, sec. 3628.

§ 3642. Undistributed property of deceased persons. The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors, or administrators; and a payment of taxes made by either binds all the parties in interest for their equal proportions. En. March 12, 1872.

Cal.Rep.Cit. 93, 471; 93, 475.

No distribution of estate until all taxes paid: Post, sec. 3752.

§ 3643. Ferries and toll-bridges, where assessed. A ferryboat is a vessel traversing across any of the waters of the state, between two constant points, regularly employed for the transfer of passengers and freight, authorized by law so to do, and also any boat employed as a part of the system of a railroad for the transfer of

passengers and freight, plying at regular and stated periods between two points. Where ferries connect more than one county, the wharves, storehouses, and all stationary property belonging to or connected with such ferries, must be assessed, and the taxes paid, in the county where located. The value of the franchise, and watercraft, and of all toll-bridges connecting more than one county, must be assessed in equal proportions in the counties connected by such ferries or toll-bridges. En. March 12, 1872. Am'd. 1880, 10; 1885, 93.

§ 3644. Vessels, where assessed. All vessels, except ferryboats, which may be registered, of every class which are by law required to be registered, must be assessed, and the taxes thereon paid, only in the county, or city and county, where the same are registered, enrolled, or licensed. En. March 12, 1872. Am'd. 1885, 93.

Cal.Rep.Cit. 63, 487.

§ 3645. Same. Vessels registered, licensed, or enrolled out of and plying in whole or in part in the waters of this state, the owners of which reside in this state, must be assessed in this state. En. March 12, 1872.

Cal.Rep.Cit. 63, 487; 63, 489.

§ 3646. Boats and small craft. All boats and small craft not required to be registered, must be assessed in the county where their owner resides. En. March 12, 1872.

§ 3647. Property and money in litigation. Money and property in litigation in possession of a county treasurer, of a court, county clerk, or receiver, must be assessed to such treasurer, clerk, or receiver, and the taxes be paid thereon under the direction of the court. En. March 12, 1872.

Cal.Rep.Cit. 87, 502; 137, 702.

§ 3648. Property concealed, misrepresented, etc. Any property willfully concealed, removed, transferred, or misrepresented by the owner or agent thereof, to evade taxation, upon discovery, must be assessed at not exceeding ten times its value, and the assessment so made must not be reduced by the board of supervisors. En. March 12, 1872.

Cal.Rep.Cit. 59, 96; 112, 594; 112, 595; 137, 468.

§ 3649. Property not taxed in previous year. Any property discovered by the assessor to have escaped assessment for the last preceding year, if such property is in the ownership or under the control of the same person who owned or controlled it for such preceding year, may be assessed at double its value. En. March 12, 1872.

Cal.Rep.Cit. 87, 500; 112, 594; 112, 595; 112, 596.

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—**§ 3650. Property, how listed.** The assessor must prepare an assessment book, with appropriate headings as directed by the state board of equalization, in which must be listed all property within the county, under the appropriate head.

1. The name of the person to whom the property is assessed.

2. Land, by township, range, section, or fractional section; and when such land is not a congressional division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, not exceeding in each and every tract six hundred and forty acres, locality, and the improvements thereon. When any tract of land is situated in two or more school, road, or other revenue districts of the county, the part in each township or district must be separately assessed. The improvements to be assessed against the particular section, tract, or lot of land upon which they are located.

3. City and town lots, naming the city or town, and the number of the lot and block, according to the system of numbering in such city or town, and the improvements thereon.

4. All personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment.

5. The cash value of real estate, other than city or town lots.

6. The cash value of improvements on such real estate.

7. The cash value of city and town lots.

8. The cash value of improvements on city and town lots.

9. The cash value of improvements on real estate assessed to persons other than the owners of the real estate.

10. The cash value of all personal property, exclusive of money.

11. The amount of money.

12. The assessment of the franchise, roadway, roadbeds, rails, and rolling stock of any railroad, as apportioned to his county by the state board of equalization, and also such other apportionments of such franchises, roadways, roadbeds, rails, and rolling stock as may be made by such board, and furnished to him for the purpose of taxation in any district in his county. Taxable improvements owned by any person, firm, association, or corporation, located upon land exempt from taxation, shall, as to the manner of assessment, be assessed as other real estate upon the assessment book. No value shall, however, be assessed against the exempt land, nor under any circumstances shall the land be charged with or become responsible for the assessment made against any taxable improvements located thereon.

13. The school, road, and other revenue districts in which each piece of property assessed is situated.

14. The total value of all property.

15. When any property, except that owned by a railroad or other quasi-public corporation, is subject to or affected by a mortgage, deed of trust, contract, or other obligation by which a debt is secured, he must enter, in the proper column, the value of such security, and deduct the same. In entering assessments containing solvent credits subject to deductions, as provided in section three thousand six hundred and twenty-eight of this code, he must enter in the proper column the value of the debts entitled to exemption and deduct the same. In making the deductions from the total value of property assessed, as above directed, he must enter the remainder in the column provided for the total value of all property for taxation. Each franchise must be entered in the assessment book without combining the same with other property or the valuation thereof.

16. The figure one (1), in separate columns, opposite the name of every person liable to pay a poll tax.

17. Such other things as the state board of equalization may require. En. March 12, 1872. Am'd. 1875-6, 11; 1880, 10; 1881, 59. Rep. 1883, 72 (in part only). Am'd. 1895, 309.

Cal.Rep.Cit. 46, 670; 53, 666; 60, 33; 62, 116; 64, 505; 64, 508; 64, 604; 66, 21; 66, 22; 68, 497; 73, 50; 80, 89; 84, 301; 84, 303; 93, 468; 93, 470; 94, 322;

112, 597; 123, 76; 137, 247. Subd. 2—137, 515. Subd. 3—131, 83. Subd. 4—64, 509; 62, 116; 131, 360. Subd. 10—62, 116. Subd. 12—123, 75. Subd. 13—46, 505. Subd. 15—46, 505.

Name of person assessed. If the owner's name cannot be ascertained, the assessment must be to "unknown owners": Ante, sec. 3636.

Correcting assessment book: See post, sec. 3881.

§ 3651. **Index to assessment book.** The assessor must prepare an index to the assessment book, which must show the name of the taxpayer, each page whereon his assessment appears, the postoffice address, or the postoffice address of his agent, secretary, or managing agent, when known. The state board of equalization shall prescribe the form of such index. En. March 12, 1872. Am'd. 1873-4, 145; 1875-6, 12; 1880, 12; 1881, 60; 1895, 310.

Cal.Rep.Cit. 64, 508; 73, 51; 96, 634; 124, 4.

§ 3652. **Affidavit to completed assessment book.** On or before the first Monday in July, in each year, the assessor must complete his assessment book. He and his deputies must take and subscribe an affidavit in the assessment book, to be substantially as follows: "I, ———, assessor of (or deputy assessor, as the case may be), ——— County, do swear that between the first Monday in March and the first Monday in July, eighteen hundred and ———, I have made diligent inquiry and examination to ascertain all the property within the county (or within the subdivision thereof assessed by me, as the case may be), subject to assessment by me, and that the same has been assessed on the assessment book, equally and uniformly, according to the best of my judgment, information, and belief, at its full cash value; and that I have faithfully complied with all the duties imposed on the assessor under the revenue laws; and that I have not imposed any unjust or double assessment through malice or ill-will or otherwise; nor allowed any one to escape a just and equal assessment through favor, or reward, or otherwise." But the failure to take or subscribe such an affidavit, or any affidavit, will not in any manner affect the validity of the assessment. En. March 12, 1872. Am'd. 1880, 13; 1881, 61.

Cal.Rep.Cit. 62, 116; 64, 508; 93, 473; 123, 56; 123, 58; 129, 299; 137, 523.

Failure to comply with this section: Pen. Code, sec. 176.

§ 3653. Copy of assessment book to be furnished cities and towns. 1. On or before the third Monday in July of each year, the assessor must furnish such incorporated cities and towns within the county as shall make written request for the same, on or before the first Monday in March of each year, a complete certified copy of his assessment book, so far as such assessment book pertains to property within the limits of said incorporated cities and towns.

2. The assessor may charge incorporated cities and towns five cents per folio of one hundred words for each copy of his assessment book, furnished such incorporated cities and towns.

3. The assessor must, on the first Monday of each month, furnish all such incorporated cities and towns within the county as shall make written request for the same, a description of all personal property, the name and address, by street and number, of the owners, and assessed value thereof, whenever the tax on such property is collected by the assessor.

4. The assessor may charge incorporated cities and towns five cents per folio of one hundred words for such description of personal property. En. March 12, 1872. Am'd. 1891, 14; 1895, 311.

Cal.Rep.Cit. 62, 116; 64, 508; 85, 647.

§ 3654. Delivery of assessment book, etc., to clerk of supervisors. Notice of meeting to equalize assessments. As soon as completed, the assessment book, together with the map books, statements, and military roll, must be delivered to the clerk of the board of supervisors, who must immediately give notice thereof, and of the time the board will meet to equalize assessments, by publication in a newspaper, if any is printed in the county; if none, then in such manner as the board may direct. In the mean time the assessment book, map book and statements must remain in his office for the inspection of all persons interested. After the board of equalization has completed its labors, the map books and statements shall be returned to the county assessor's office, and shall be kept in said office for future reference. En. March 12, 1872. Am'd. 1895, 311.

Cal.Rep.Cit. 53, 394; 62, 116; 64, 508.

§ 3655. Statement by assessor to state board of equalization, to show what. On the second Monday in July of each year, the assessor of each county must transmit to the state board of equalization, in such form as said board shall require, a statement showing:

1. The several kinds of personal property.
2. The average and total value of each kind.
3. The number of livestock, number of bushels of grain, number of gallons of wines or liquors, number of pounds or tons of any article sold by the pound or ton.
4. When practicable, the separate value of each class of land, specifying the classes and the number of acres of each.
5. A true statement of the agricultural and industrial pursuits and products of the county, with such other statistical information as said board shall require. En. March 12, 1872. Am'd. 1895, 311.

Cal.Rep.Cit. 46, 505; 68, 497; 129, 299.

§ 3656. Penalty for failure of assessor to complete assessment book and transmit statement. Every assessor who fails to complete his assessment book, or who fails to transmit the statement mentioned in the preceding section to the state board of equalization, forfeits the sum of one thousand dollars, to be recovered on his official bond, for the use of the county, in an action brought in the name of the people by the attorney-general when directed to do so by the state board of equalization. En. March 12, 1872. Am'd. 1895, 311.

Cal.Rep.Cit. 76, 279; 129, 299.

§ 3657. Persons claiming ownership of property and desiring to be assessed. Lands once described on the assessment book need not be described a second time, but any person claiming the same, and desiring to be assessed therefor, may have his name inserted with that of the person to whom such land is assessed. En. March 12, 1872.

Cal.Rep.Cit. 99, 675.

§ 3658. Supervisors to furnish assessor with maps, books, etc. The board of supervisors of each county must provide and furnish the assessor with the proper books, blanks, maps, and plat books for the use of his office. Such maps and plat books shall show the private

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lands owned or claimed in the county, and if surveyed under the authority of the United States, the divisions and subdivisions thereof, with their acreage, according to such survey; if held under Spanish grant, the exterior boundaries of such grants, the divisions and subdivisions and number of acres claimed. The proper maps and plat books of cities, towns, villages, school districts, and road districts must in like manner be provided and furnished. The state board of equalization shall prescribe the forms for such books, blanks, maps, and plat books, and may require such map and plat books to be indexed to show owners' names, give correct description for assessment, show improvements and assessed value. The board of supervisors of each county shall in like manner furnish the assessor the necessary office room, furniture, and stationery. If the board of supervisors of any county fails or refuses to provide and furnish the assessor with the proper books, blanks, maps, and plat books, and the necessary office room, furniture, and stationery, as in this section provided, then the state board of equalization must, upon the application of the assessor, provide and furnish the same. The cost of such books, blanks, maps, plat books, office room, furniture, and stationery shall be a county charge, whether the same be provided and furnished by the board of supervisors or by the state board of equalization, and must be paid in the same manner as other county charges from the county general fund. En. March 12, 1872. Am'd. 1895, 312; 1901, 51.

Cal.Rep.Cit. 73, 51.

§ 3658a. Official maps; assessment by reference to. Whenever any city, town, or subdivision of land is platted or divided into lots or blocks, and whenever any addition to any city, town, or such subdivision shall be or has been laid out into lots or blocks for the purpose of sale or transfer, it shall be lawful for the city engineer, or the county or city and county surveyor, under the direction and with the approval of the city council or board of supervisors of said city, county, or city and county, to make an official map of such city, town, or subdivision, giving to each block on such map a number, and to each lot or subdivision in such block a separate number or letter, and giving names to such streets, avenues, lanes,

courts, commons, or parks, as may be delineated on such official map. Whenever the city council or board of supervisors of such city, county, or city and county, shall adopt such map as the official map of the subdivision, town, city, county, or city and county, it shall be lawful to, and the assessor shall, describe such lots, blocks, or parcels of land by numbers or letters as delineated on such map in assessing such property, and it shall be lawful and sufficient to describe such lots or blocks in any deeds, conveyances, contracts, or obligations affecting any such lots or blocks as designated on such official map, a reference to such map sufficient for the identification thereof being coupled with such description. Such engineer or surveyor, under the direction and with the approval of the city council or board of supervisors of such city, county, or city and county, may compile such map from maps on file, or may resurvey or renumber the blocks, or renumber or reletter the lots in such blocks, or change the names of streets. All surveys and the field notes thereof made by any such engineer or surveyor, under the provisions of this section, or in surveying officially any lots or parcels of land in any city, town, county, or city and county, for the purposes of any such map, shall be filed in the office of the surveyor or engineer, as the case may be, and shall become a part of the public records of such city, town, county, or city and county. Each and every map, made and adopted as hereinabove provided, shall be certified under the hands of a majority of the members and the presiding officer and secretary and official seal, if any, of the authority adopting the same. Such certificate shall set forth in full the resolution adopting such map, with the date of adoption; and such map, so certified, shall be forthwith filed in the office of the county recorder of the county, or city and county, wherein the platted lands are situate, and the said recorder shall immediately securely fasten and bind, in one of a series of firmly bound books to be provided, together with the proper indexes thereof and appropriately marked for the reception of the maps herein provided for, each such map so filed with him; and the same shall become an official map for all the purposes of this section when so certified, filed and bound, but not before. This section is hereby made applicable to all

cities, towns, and villages in this state, as well as to the counties, and cities and counties thereof, whether the same be incorporated or not; and the words "city council or board of supervisors" wherever used herein shall be deemed to include the proper corresponding governing board and authority in each such place; and the words "city engineer" and "county or city and county surveyor" shall be deemed to include the like or corresponding officer, subject to the direction of such "corresponding governing board and authority" in each such place; or, if there be no such officer subject to such direction, such "corresponding board and authority" may employ competent engineers and surveyors to the extent necessary for the carrying out of the purposes of this act in the places subject to its jurisdiction, and the persons so appointed shall have the same authority and shall perform the same duties as are given to and enjoined upon "city engineers" and "county or city and county surveyors," respectively, in like cases. The services of such engineers and surveyors so employed shall be contracted for, examined, passed upon, audited, and paid as are other debts contracted by such governing boards and authorities. En. Stats. 1903, 408.

§ 3659. Duty of surveyor-general in relation to lands sold state. On or before the first Monday in March in each year, the surveyor-general of the state and the tide land commissioners must make out and transmit to the assessor of each county where lands or lots lie that may have been sold by the state, for which certificates of purchase, patents or deeds have issued, during the year preceding, certified lists of such lands or lots, giving a description thereof by congressional divisions and subdivisions, or lots and blocks, together with the names of the purchasers thereof, and the amount of the principal unpaid, if any, on the first Monday in March. En. March 12, 1872. Am'd. 1897, 427.

Cal.Rep.Cit. 58, 146; 73, 51.

Tide land commissioners, board of, abolished by repeal of: Ante, secs. 365 and 698.

§ 3660. When assessor liable for taxes on unassessed property. The assessor and his sureties are liable on his official bonds for all taxes on property within the

county, which, through his willful failure or neglect is unassessed. En. March 12, 1872.

Official bonds: Ante, secs. 947-987.

§ 3661. District attorney to prosecute assessor for unpaid taxes, when. Any taxpayer who shall have knowledge of any property that has escaped taxation as provided in the preceding section, may file with the board of supervisors an affidavit setting forth the fact that such property has, through the willful failure or neglect of the assessor, escaped taxation, together with a description of the property as near as such taxpayer may be able to give; whereupon said board shall direct the district attorney to commence an action on the assessor's bond for the amount of taxes lost from such willful failure or neglect. En. March 12, 1872. Am'd. 1895, 312.

§ 3662. Judgment, when entered against assessor. On the trial of such action, the value of the property unassessed being shown, judgment for the amount of taxes that should have been collected thereon must be entered. The amount thus recovered shall be distributed as provided in section three thousand eight hundred and sixteen of this code. En. March 12, 1872. Am'd. 1895, 312.

§ 3663. Assessment of water ditches, toll roads and telegraph lines. Water ditches constructed for mining, manufacturing or irrigating purposes, and wagon and turnpike toll roads must be assessed the same as real estate by the assessor of the county, at a rate per mile for that portion of such property as lies within his county. All telegraph and telephone lines shall be described in the same manner as real estate is described, but assessed as personal property by the assessor of the county, at a rate per mile for that portion of such property as lies within his county. En. March 12, 1872. Am'd. 1873-4, 158; 1880, 13; 1880, 59; 1895, 312.

Cal.Rep.Cit. 79, 590; 84, 74; 137, 515.

§ 3664. Agent of corporation, statement by to state board of equalization. The president, secretary or managing agent, or such other officer as the state board of equalization may designate of any corporation, and each person, or association of persons, owning or operating any railroad in more than one county in this state, shall,

on or before the first Monday in April of each year furnish the said board a statement, signed and sworn to by one of such officers, or by the person or one of the persons forming such association, showing in detail for the year ending on the first Monday in March in each year:

1. The whole number of miles of railway in the state, and, where the line is partly out of the state, the whole number of miles without the state, and the whole number within the state, owned or operated by such corporation, person or association;

2. The value of the roadway, roadbed and rails of the whole railway, and the value of the same within the state;

3. The width of the right of way;

4. The number of each kind of all rolling stock used by such corporation, person or association in operating the entire railway, including the part without the state;

5. Number, kind and value of rolling stock owned and operated in the state.

6. Number, kind and value of rolling stock used in the state, but owned by the party making the returns;

7. Number, kind and value of rolling stock owned, but used out of the state, either upon divisions of road operated by the party making the returns, or by and upon other railways.

Also showing in detail for the year preceding the first of January:

1. The gross earnings of the entire road;

2. The gross earnings of the road in the state, and where the railway is let to other operators, how much was derived by the lessor as rental;

3. The cost of operating the entire road, exclusive of sinking fund, expenses of land department, and money paid to the United States;

4. Net income for such year and amount of dividend declared;

5. Capital stock authorized;

6. Capital stock paid in;

7. Funded debt;

8. Number of shares authorized;

9. Number of shares of stock issued;

10. Any other facts the state board of equalization may require;

11. A description of any part or portion of such railroad which may be in the possession and control of any other railroad company or corporation, and operated by such other corporation under a lease or other contract.

12. The president, secretary or managing agent, or such other officer as the state board of equalization may designate of any corporation or association of persons operating in this state any portion of a line of railroad owned by and belonging to some other corporation or association, which runs in more than one county, shall make the same statement as is herein required to be made by the foregoing provisions of this section by the owner of such railroad.

13. A description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road shall once have been given, no other annual description thereafter is necessary, unless the road shall have been changed. Whenever the road, or any portion of the road, is advertised to be sold, or is sold for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the corporation, person, or association giving the description. No assessment is invalid on account of a misdescription of the railway, or the right of way for the same.

If such statement is not furnished as above provided, the assessment made by the state board of equalization upon the property of the corporation, person or association failing to furnish the statement is conclusive and final. En. Stats. 1880, 13. Am'd. 1883, 65; 1897, 400.

Cal.Rep.Cit. 60, 27; 60, 28; 60, 29; 60, 30; 60, 31; 60, 32; 60, 34; 68, 552; 105, 591; 124, 502.

§ 3665. Assessment of railway franchises and properties. The state board of equalization must meet at the state capitol on the third Monday in July, and continue in open session from day to day, Sundays excepted, until the first Monday in August. At such meeting the board must assess the franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county, but franchises derived from the United States shall not be assessed. Assessments must be made to the corporation, person or association of persons owning the same.

If any portion of any railroad less than the whole is operated by some corporation or association of individuals other than the owner of such railroad, under lease or other contract, and such portion so operated runs in more than one county, the value of such part or portion of such railroad shall be assessed separate and apart from the balance of said railroad, and the board shall assess the roadway, roadbed and rails of such portion of said railroad, together with the rolling stock used thereon by the corporation or association of individuals operating the same. The depots, stations, shops and buildings erected upon the space covered by the right of way, and all other property owned by such person, corporation or association of persons, are assessed by the assessor of the county wherein they are situate. Within twenty days after the first Monday of August, the board must apportion the total assessment of the franchise, roadway, roadbed, rails and rolling stock of each railway to the counties, or cities and counties, in which such railway is located, in proportion to the number of miles of railway laid in such counties, and cities and counties. The board must also, within said time, transmit by mail to the county auditor of each county, or city and county, to which such apportionment shall have been made, a statement showing the length of the main track of such railway within the county, or city and county, with a description of the said track within the county, or city and county, including the right of way, by metes and bounds, or other description sufficient for identification, the assessed value per mile of the same, as fixed by a pro rata distribution per mile of the assessed value of the whole franchise, roadway, roadbed, rails and rolling stock of such railway within the state, and the amount apportioned to the county, or city and county. The auditor must enter the statement on the assessment roll or book of the county, or city and county, and where the county is divided into assessorial townships or districts, then on the roll or book of any township or district he may select, and enter the amount of the assessment apportioned to the county, or city and county, in the column of the assessment book or roll as aforesaid, which shows the total value of all property for taxation, either of the county, city and county, or such township

or district. On the third Monday in September, the board of supervisors must make and cause to be entered in the proper record book an order stating and declaring the length of main track of the railway assessed by the state board of equalization within the county, the assessed value per mile of such railway, the number of miles of track, and the assessed value of such railway lying in each city, town, township, school and road district, or lesser taxation district in the county, or city and county, through which such railway runs, as fixed by the state board of equalization which shall constitute the assessment value of said property for taxable purposes in such city, town, township, school, road or other district; and the clerk of the board of supervisors must transmit a copy of each order or equalization to the city council, or trustees, or other legislative body of incorporated cities or towns, the trustees of each school district and the authorized authorities of other taxation districts through which such railway runs. All such railway property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purposes, as the property of individuals within such city, town, township, school, road and lesser taxation districts, respectively. If the owner of a railway assessed by the state board of equalization is dissatisfied with the assessment made by the board, such owner may, at the meeting of the board, under the provisions of section three thousand six hundred and ninety-two of the Political Code, between the first Monday in August and the first Monday in September, apply to the board to have the same corrected in any particular, and the board may correct and increase or lower the assessment made by it so as to equalize the same with the assessment of other property in the state. If the board shall increase or lower any assessment previously made by it, it must make a statement to the county auditor of the county affected by the change in the assessment of the change made, and the auditor must note such change upon the assessment book or roll of the county, as directed by the board. En. Stats. 1880, 14. Am'd. 1883, 66; 1889, 349; 1891, 438; 1897, 401; 1897, 427.

Cal.Rep.Cit. 60, 27; 60, 28; 60, 29; 60, 30; 60, 32; 68, 552; 83, 403; 105, 591; 124, 502.

On the same day another section 3665 was approved, p. 401. This differed from the one in the text only in that the supervisors must make the entry on the fourth instead of the third Monday.

§ 3666. Record of assessment of railways. The state board of equalization must prepare each year a book, to be called "Record of Assessments of Railways," in which must be entered each assessment made by the board, either in writing or by both writing and printing. Each assessment so entered must be signed by the chairman and clerk. The record of the apportionment of the assessments made by the board to the counties, and cities and counties, must be made in a separate book, to be called "Record of Apportionment of Railway Assessments." In such last-described book must be entered the names of the railways assessed by the board; the names of the corporations to which, or the name of the person or association to whom was assessed each railway in the state; the number of miles thereof in each county, or city and county; the total assessment of the franchise, roadway, roadbed, rails and rolling stock, for purposes of state taxation; and the amount of the apportionment of such total assessment to each county, and city and county, for county, or city and county taxation. Before the third Monday in September of each year, the clerk of the state board of equalization must prepare and transmit to the controller of state duplicates of the "Record of Assessment of Railways" and "Record of Apportionment of Railway Assessments," each certified by the chairman and clerk of the board, and to be known, respectively, as "Duplicate Record of Assessment of Railways" and "Duplicate Record of Apportionment of Railway Assessments." In the last-named duplicate all necessary appropriate columns must be added, in which the controller must enter the amount of taxes in installments due the state upon the whole assessment, by each corporation, person or association, and the amount of taxes, in installments, due each county, or city and county, upon the assessment apportioned to each county, or city and county, by each corporation, person or association. The two duplicates constitute the warrant for the controller to collect the state and county, and city and county taxes

levied upon such property assessed by the board, and the amount of the apportionment of the assessment to each county, and city and county, respectively. En. Stats. 1883, 68. Am'd. 1891, 440; 1895, 313.

Cal.Rep.Cit. 60, 34; 124, 502.

§ 3667. **Notice to controller of county rate of taxation.** When the board of supervisors of each county, and city and county, to which the state board of equalization has apportioned the assessment of railways, shall have fixed the rate of county, or city and county, taxation, the clerk of the board of supervisors must, within three days after such rate has been fixed, transmit by mail, postage paid, to the controller, in such form as the controller shall direct, a statement of the rate of taxation levied by the board of supervisors for county, or city and county, taxation. If the clerk fails to transmit such statement in the time herein provided for, he shall forfeit to the state one thousand dollars, to be recovered in an action brought by the attorney-general in the name of the controller. On or before the second Monday of October the controller must compute and enter in separate money columns, in the "Duplicate Record of Apportionment of Railway Assessments" the respective sums, in dollars and cents, rejecting fractions of a cent, to be paid by the corporation, person or association liable therefor, as the state tax upon the total amount of the assessment, and the county, or city and county, tax upon the apportionment of the assessment to each county, and city and county, of the property assessed to such corporation, person or association named in said duplicate record. En. Stats. 1883, 69. Am'd. 1891, 440; 1895, 313.

Cal.Rep.Cit. 124, 502.

§ 3668. **Publication by controller.** Within ten days after the second Monday in October, the controller must publish a notice for two weeks in one daily newspaper of general circulation at the state capital, and in two daily newspapers of general circulation published in the city of San Francisco, specifying—

1. That he has received from the state board of equalization the "Duplicate Record of Assessments of Railways" and the "Duplicate Record of Apportionment of Railway Assessments."

2. That the taxes on all personal property and one half of the taxes on all real property are now payable, and will be delinquent on the last Monday in November next, at six o'clock P. M., and that unless paid to the state treasurer at the capitol, prior thereto, five per cent will be added to the amount thereof, and unless so paid on or before the last Monday in April next, at six P. M., an additional five per cent will be added to the amount thereof. That the remaining one half of the taxes on all real property will be due and payable at any time after the first Monday in January next, and will be delinquent on the last Monday in April next, at six o'clock P. M.., and that unless paid to the state treasurer, at the capitol, prior thereto, five per cent will be added to the amount thereof.

On the last Monday in April of each year, at six o'clock P. M., all unpaid taxes are delinquent, and thereafter there must be collected by the state treasurer, or other proper officer, an addition of ten per centum upon those taxes which became delinquent the preceding November, and have not been paid, prior to the said time, on the last Monday in April of each year, and an addition of five per centum upon all taxes for the preceding year, which became delinquent on the said last Monday in April, which sum, when collected, must be set aside by the treasurer as a fund with which to pay the contingent expenses of actions against any delinquents, the said expenses to be audited by the board of examiners, and any surplus remaining shall go into the general school fund of the state. When any taxes are paid to the state treasurer by order of the controller, upon assessments made and apportioned by the state board of equalization, the controller must forthwith notify the auditor and treasurer, respectively, of each county, and city and county, that such taxes have been paid, and of the amount thereof to which each county, and city and county, interested is entitled. The state's portion of the taxes must be distributed by the treasurer to each fund entitled thereto, and the portion belonging to the counties and cities and counties must be placed in a fund, to be called "Railway Tax Fund," to the credit of each county and city and county entitled thereto. When any taxes are placed in the "Railway Tax Fund" to the credit of a county, or city and county, the controller, at the next settlement

with the controller by the treasurer of such county, or city and county, must draw and deliver to such treasurer his warrant upon the state treasurer for the amount in the fund to the credit of such county, or city and county. En. Stats. 1883, 69. Am'd. 1891, 441.

Cal.Rep.Cit. 88, 396; 105, 583; 105, 594; 124, 502.

§ 3669. **Certain taxes to be paid state treasurer.** Each corporation, person or association assessed by the state board of equalization must pay to the state treasurer, upon the order of the controller, as other moneys are required to be paid into the treasury, the state and county and city and county taxes each year levied upon the property so assessed to it or him by said board. Any corporation, person or association dissatisfied with the assessment made by the board, upon the payment of the taxes due upon the assessment complained of, and the percentage added, if to be added, on or before the first Monday in June, and the filing of notice with the controller of an intention to begin an action, may, not later than the first Monday in June, bring an action against the state treasurer for the recovery of the amount of taxes and percentage so paid to the treasurer, or any part thereof, and in the complaint may allege any fact tending to show the illegality of the tax, or of the assessment upon which the taxes are levied, in whole or in part. A copy of the complaint and of the summons must be served upon the treasurer within ten days after the complaint has been filed, and the treasurer has thirty days within which to demur or answer. At the time the treasurer demurs or answers, he may demand that the action be tried in the superior court of the county of Sacramento. The attorney-general must defend the action. The provisions of the Code of Civil Procedure relating to pleadings, proofs, trials and appeals are applicable to the proceedings herein provided for. If the final judgment be against the treasurer, upon presentation of a certified copy of such judgment to the controller he shall draw his warrant upon the state treasurer, who must pay to the plaintiff the amount of the taxes so declared to have been illegally collected; and the cost of such action, audited by the board of examiners, must be paid out of any money in the general fund of the treasury, which is hereby appropriated, and the controller may demand and receive from the county,

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or city and county interested, the proportion of such costs, or may deduct such proportion from any money then or to become due to said county, or city and county. Such action must be begun on or before the first Monday in June of the year succeeding the year in which the taxes were levied, and a failure to begin such action is deemed a waiver of the rights of action. En. Stats. 1883, 70. Am'd. 1891, 442.

Cal.Rep.Cit. 83, 396; 105, 583; 117, 440; 124, 502.

§ 3670. Controller to sue for delinquent taxes. Within sixty days after the first Monday in June of each year, the controller must begin an action in the proper court, in the name of the people of the state of California, to collect the delinquent taxes upon the property assessed by the state board of equalization; such suit must be for the taxes due the state, and all the counties, and cities and counties, upon property assessed by the board of equalization and appearing delinquent upon the "Duplicate Record of Apportionment of Railway Assessments." The provisions of the Code of Civil Procedure relating to pleadings, proofs, trials and appeals are applicable to the proceedings herein provided for. In such action, should a writ of attachment be demanded and issued, no bond nor affidavit previous to the issuing of said attachment is required. If in such action the plaintiff recover judgment, there shall be included in the judgment as counsel fees, and in case of judgment of taxes, after suit brought but before judgment, the defendant must pay as counsel fees such sum as the court may determine to be reasonable and just. Payment of the taxes, or the amount of the judgment in the same, must be made to the state treasurer. In such actions the "Duplicate Record of Assessments of Railways" and the "Duplicate Record of Apportionment of Railway Assessments," or a copy of them, certified by the controller, showing unpaid taxes against any corporation, person or association for property assessed by the state board of equalization, is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of the taxes due and unpaid to the state, and counties, or cities and counties therein named, and that the corporation, person or association is indebted to the people of the state of California in the amount of taxes, state and coun-

ty, and city and county, therein appearing unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with. En. Stats. 1883, 71. Am'd. 1891, 442; 1895, 314.

Cal.Rep.Cit. 68, 552; 69, 648; 83, 396; 83, 398; 83, 403; 105, 583; 105, 588; 105, 591; 105, 596; 108, 48; 137, 661.

§ 3671. **Basis of taxation for counties.** The assessment made by the county assessor, and that of the state board of equalization, as apportioned by the boards of supervisors to each city, town, township, school, road or other district in their respective counties, or cities and counties, shall be the only basis of taxation for the county, or any subdivision thereof, except in incorporated cities and towns, and may also be taken as such basis in incorporated cities and towns when the proper authorities may so elect. All taxes upon townships, road, school or other local districts shall be collected in the same manner as county taxes. En. Stats. 1883, 72.

Cal.Rep.Cit. 68, 552; 91, 434; 137, 661; 137, 662.

CHAPTER IV.

EQUALIZATION OF TAXES.

Article I. County Boards of Equalization, §§ 3672-3682.
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ARTICLE I.

COUNTY BOARDS OF EQUALIZATION.

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§ 3672. **Supervisors, when to equalize assessment.** The board of supervisors of each county must meet on the first Monday of July in each year to examine the assessment book and equalize the assessment of property in

the county. It must continue in session for that purpose, from time to time, until the business of equalization is disposed of, but not later than the third Monday in July. En. March 12, 1872. Am'd. 1891, 444.

Cal.Rep.Cit. 75, 174; 116, 352; 116, 354; 129, 299; 131, 228.

§ 3673. Supervisors empowered to equalize assessment. The board has power, after giving notice in such manner as it may by rule prescribe, to increase or lower the entire assessment roll or any assessment contained therein, so as to equalize the assessment of the property contained in said roll, and make the assessment conform to the true value of such property in money. En. March 12, 1872. Am'd. 1880, 15.

Cal.Rep.Cit. 46, 671; 62, 116; 64, 508; 82, 216; 104, 164; 112, 597; 131, 228; 131, 230; 137, 522.

County boards of equalization provided for by Const. Cal., art. XIII, sec. 9.

§ 3674. No reduction to be made unless on application of person assessed. No reduction must be made in the valuation of property unless the party affected thereby, or his agent, makes and files with the board a written application therefor, verified by his oath, showing the facts upon which it is claimed such reduction should be made. En. March 12, 1872.

Cal.Rep.Cit. 64, 508.

§ 3675. Examination of person assessed by supervisors for purposes of equalization. Before the board grants the application or makes any reduction applied for, it must first examine, on oath, the person or the agent making the application, touching the value of the property of such person. No reduction must be made unless such person or the agent making the application attends and answers all questions pertinent to the inquiry. En. March 12, 1872.

Cal.Rep.Cit. 61, 55; 64, 508.

§ 3676. Supervisors may subpœna witnesses and take evidence. Upon the hearing of the application the board may subpœna such witnesses, hear and take such evidence in relation to the subject pending, as in its discretion it may deem proper. En. March 12, 1872.

Cal.Rep.Cit. 64, 508; 82, 218.

§ 3677. Assessor and deputy to attend upon hearing of application. During the session of the board the assessor and any deputy whose testimony is needed must be present, and may make any statement, or introduce and examine witnesses on questions before the board. En. March 12, 1872.

Cal.Rep.Cit. 64, 508; 131, 228; 131, 230.

§ 3678. Abstract of incumbrances furnished by recorder, and action thereon. To assist the assessor in the performance of his duties, the recorder must annually transmit to the assessor, on or before the first Monday in April of each year, a complete abstract of all mortgages, deeds of trust, contracts, and other obligations by which any debt is secured, remaining unsatisfied on the records of his office, not barred by the statute of limitation, at twelve o'clock meridian, on the first Monday of March of said year. Such abstract shall be written under appropriate headings, to embrace all information requisite for the assessor, in a book or books to be furnished by the board of supervisors upon the requisition of the assessor. Should any such list be found to contain any instrument relating to lands situated in more than one county, it shall be the duty of the assessor to transmit to the state board of equalization all information relating thereto on or before June first of said year; and it shall be the duty of the said board to attach an apportionment of valuation of such instrument to be assessed in each county, and the board shall transmit to the assessor of each county mentioned as affected in said instrument, a statement of valuation of assessment to be levied against said instrument in each county. The valuation so set by said board shall be final, and the assessor shall accept said valuation and charge said assessment upon said instrument accordingly. Should the list contain any instrument mortgaging or pledging two or more subdivisions of land, or land assessed in two or more subdivisions in the same county, township, district or city, the assessor shall apportion the amount of assessment to be deducted from each subdivision on account of assessment against said instrument. Any assessment on a mortgage, or deed of trust, which has been erroneously taxed to the mortgagee or party loaning the money, when the same has been paid or satisfied prior to the first Monday in March, shall be valid

only as against the real estate from the assessment on which a reduction has been previously made. When partial payments have been made on a debt, secured by mortgage, or deed of trust, the owner is authorized to make the proper deduction, listing only the balance due on the first Monday in March. The recorder must, at the time he furnishes the abstract of mortgages to the assessor, furnish said officer with a complete and true statement of all property which has been redeemed under or by virtue of any sale made to the state for delinquent taxes, together with a complete and true statement of all property sold to the state and remaining unredeemed. When necessary, the board of supervisors of each county must provide for the payment of such additional clerical force as may be required to enable the county recorder to comply with this section. En. March 12, 1872. Am'd. 1880, 15; 1895, 314.

Cal.Rep.Cit. 60, 372; 66, 215; 131, 228.

§ 3679. **Supervisors to use records in equalizing assessments.** The board must use the abstract and all other information it may gain from the records of the county recorder or elsewhere, in equalizing the assessment of the property of the county, and may require the assessor to enter upon the assessment book any property which has not been assessed; and any assessment made as prescribed in this section has the same force and effect as if made by the assessor before the delivery of the assessment book to the clerk of the board. En. March 12, 1872. Am'd. 1880, 16.

Cal.Rep.Cit. 62, 117; 131, 228.

§ 3680. **Sale of land for taxes, stamping on later bills.** Whenever property has been sold for taxes and remains unredeemed, upon each subsequent assessment the assessor shall enter upon the assessment book, immediately after the description of the property, the fact that said property has been sold for taxes, and the date of such sale. Upon all bills or statements of or for taxes accruing on said property, subsequent to the date of said sale and prior to the redemption of said property, or the execution to the state of a deed therefor, shall be distinctly and legibly written, printed, or stamped, the words "Sold for taxes," and also the date of such sale. En. March 12,

1872. Am'd. 1873-4, 159. Rep. 1880, 17. En. Stats. 1895, 315.

§ 3681. Supervisors may revise assessment list. During the session of the board, it may direct the assessor to assess any taxable property that has escaped assessment, or to add to the amount, number, or quantity of property, when a false or incomplete list has been rendered; and to make and enter new assessments (at the same time canceling previous entries), when any assessment made by him is deemed by the board so incomplete as to render doubtful the collection of the tax; but the clerk must notify all persons interested, by letter deposited in the postoffice or express, postpaid, and addressed to the person interested, at least five days before action taken, of the day fixed when the matter will be investigated. En. March 12, 1872. Am'd. 1897, 429.

Cal.Rep.Cit. 62, 102; 64, 508; 97, 323.

§ 3682. Clerk's record of alterations, etc., and oath to correctness of same. The clerk of the board must record, in a book to be kept for that purpose, all changes, corrections, and orders made by the board, and during its session, or as soon as possible after its adjournment, must enter upon the assessment book all changes and corrections made by the board, and on or before the first Monday of August must deliver the assessment so corrected to the county auditor, and accompany the same with an affidavit thereto affixed, subscribed by him, as follows:

"I, —— ——, do swear that, as clerk of the board of supervisors of ——— County, I have kept correct minutes of all the acts of the board touching alterations in the assessment book; that all alterations agreed to or directed to be made have been made and entered in the book, and that no changes or alterations have been made therein except those authorized." En. March 12, 1872.

Cal.Rep.Cit. 67, 626; 129, 299; 137, 521; 137, 523.

ARTICLE II.

STATE BOARD OF EQUALIZATION.

§ 3692. Powers and duties of board.
§ 3693. Equalization of assessments.
§ 3694. Penalty for failure of auditor to forward statement.
§ 3695. Statement of changes made by board, sent to county auditors. Same as evidence.
§ 3696. Fixing rate of state tax, notice of.
§ 3697. Penalty for refusing to obey rules and regulations of board.
§ 3698. Prosecution of assessor fraudulently assessing property.
§ 3699. Clerk and members of board may administer oaths.
§ 3700. Salary of members and of clerk.
§ 3701. Salary of clerk.
§ 3702. Traveling expenses, office and incidentals.
§ 3703. Official bonds of members of the board. (Repealed.)
§ 3704. Duty of board upon failure of county boards to appoint assessors, etc. (Repealed.)
§ 3705. State board may extend time.

§ 3692. Powers and duties of board. The powers and duties of the state board of equalization are as follows:

1. To prescribe rules for its own government and for the transaction of its business.

2. To prescribe rules and regulations, not in conflict with the constitution and laws of the state, to govern supervisors when equalizing, and assessors when assessing.

3. To make out, prepare, and enforce the use of all forms in relation to the assessment of property, collection of taxes, and revenue of this state.

4. To hold regular meetings at the state capitol, on the second Monday in each month, and such special meetings as the chairman may direct.

5. To annually assess the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this state, at their actual value, on the first Monday in March, at twelve o'clock M., and to apportion such assessment to the counties and cities and counties in which such railroads are located, in proportion to the number of miles of railway laid in such counties and cities and counties in the manner provided for in section three thousand six hundred and sixty-four of said code.

6. To equalize the assessment of each mortgage, deed of trust, contract, or other obligation by which a debt is secured, and which affects property situate in two or more counties, and to apportion the assessment thereof to each of such counties.

7. To transmit to the assessor of each county, or city and county, its apportionment of the assessments made by said board upon the franchises, roadways, roadbeds, rails, and rolling stock of railroads, and also its apportionment of the assessments made by such board upon mortgages, deeds of trust, contracts, and other obligations by which debts are secured, in the manner provided for in section three thousand six hundred and sixty-four of said code.

8. To meet at the state capitol on the first Monday in August, and remain in session from day to day, Sundays excepted, until the second Monday in September.

9. At such meeting to equalize the valuation of the taxable property of the several counties in this state for the purposes of taxation; and to the end, under such rules of notice to the clerk of the board of supervisors of the county affected thereby, as it may prescribe, to increase or lower the entire assessment-roll so as to equalize the assessment of the property contained in said roll, and make the assessment conform to the true value in money of the property assessed; and to fix the rate of state taxation, and to do the things provided in section three thousand six hundred and ninety-three of said code; provided, that no board of equalization shall raise any mortgage, deed of trust, contract, or other obligation by which a debt is secured, money, or solvent credits, above its face value.

10. To visit as a board, or by the individual members thereof, whenever deemed necessary, the several counties of the state, for the purpose of inspecting the property and learning the value thereof.

11. To call before it, or any member thereof, on such visit, any officers of the county, and to require them to produce any public records in their custody.

12. To issue subpœnas for the attendance of witnesses or the production of books before the board, or any member thereof, which subpœnas must be signed by a member of the board, and may be served by any person.

13. To appoint a clerk, prescribe, and enforce his duties. The clerk shall hold his office during the pleasure of the board.

14. To report to the governor, annually, a statement showing:

First—The acreage of each county in the state that is assessed.

Second—The amount assessed per acre.

Third—The aggregate value of all town and city lots.

Fourth—The aggregate value of all real estate in the state.

Fifth—The kinds of personal property in each county, and the value of each kind.

Sixth—The aggregate value of all personal property in the state.

Seventh—Any information relative to the assessment of property, and the collection of revenue.

Eighth—Such further suggestions as it shall deem proper.

15. To keep a record of all its proceedings. En. March 12, 1872. Am'd. 1875-6, 12; 1880, 25; 1891, 444; 1895, 316.

Cal.Rep.Cit. 60, 27; 60, 33; 137, 522. Subd. 2—46, 505. Subd. 6—46, 505. Subd. 7—46, 505. Subd. 8—68, 497. Subd. 9—60, 30; 68, 497.

§ 3693. Equalization of assessments. When, after a general investigation by the board, the property is found to be assessed above or below its full cash value, the board may, without notice, so determine, and must add to or deduct from the valuation:

1. The real estate.

2. Improvements upon such real estate.

3. The personal property, such per centum, respectively, as is sufficient to raise or reduce it to its full cash value; provided, that no board of equalization shall raise any mortgage, deed of trust, contract, or other obligation by which a debt is secured, money, or solvent credits, above its face value. En. March 12, 1872. Am'd. 1873-4, 147. Rep. 1875-6, 14. En. Stats. 1880, 27. Am'd. 1895, 317.

Cal.Rep.Cit. 46, 505; 47, 651; 47, 659; 60, 27; 60, 30; 60, 31.

§ 3694. Penalty for failure of auditor to forward statement. Every county auditor who fails to forward to the state board of equalization, and to the controller, the statement provided for in section three thousand seven hundred and twenty-eight, forfeits to the state one thousand dollars, to be recovered in an action brought by the attorney-general, in the name of the state board of equalization. En. March 12, 1872. Am'd. 1875-6, 13; 1895, 317.

Cal.Rep.Cit. 46, 505; 47, 665.

§ 3695. Statement of changes made by board, sent to county auditors. Same as evidence. When the equaliza-

tion among the several counties is completed, the clerk of the board must transmit to each county auditor a statement of the changes made by the board in the assessment-roll of the county, or in any assessment contained therein, and of the per centum to be added to or deducted from the valuation of such statement, which shall be prima facie evidence of the regularity of all proceedings of the board, resulting in the action which is the subject matter of the statement. En. March 12, 1872. Rep. 1875-6, 14. En. Stats. 1880, 27.

Cal.Rep.Cit. 46, 505; 68, 497; 137, 251.

Prima facie evidence defined: Code Civ. Proc., sec. 1833.

§ 3696. Fixing rate of state tax, notice of. Between the first and second Mondays in September of each year, the board must determine the rate of state tax to be levied and collected upon the assessed valuation of the property of the state, which, after allowing five per cent for delinquencies in and costs of collection of taxes, must be sufficient to raise the specific amount of revenue directed to be raised by the legislature for state purposes. The board must immediately thereafter transmit to the board of supervisors and county auditor of each county a statement of such rate, and upon its receipt the clerk of said board and county auditor must each, in writing, notify the state board of equalization thereof. En. March 12, 1872. Am'd. 1873-4, 147; 1873-4, 159; 1875-6, 13; 1877-8, 65; 1891, 445; 1893, 300.

Cal.Rep.Cit. 46, 476; 46, 480; 46, 506; 46, 490; 47, 650; 47, 652; 47, 665; 53, 178; 68, 498.

§ 3697. Penalty for refusing to obey rules and regulations of board. Every person served with a subpœna who fails or neglects, without just excuse, to obey it, and every officer who refuses to obey the rules and regulations prescribed by the board, or to perform the duties prescribed therein, forfeits to the state five hundred dollars, to be recovered by action in the name of the board, which action may be commenced and tried in any county of the state. En. March 12, 1872.

Cal.Rep.Cit. 76, 279.

§ 3698. Prosecution of assessor fraudulently assessing property. Whenever the state board of equalization is satisfied that the assessor or a deputy assessor of any

county has knowingly, fraudulently, or corruptly assessed any property below its actual cash value, it must immediately inform the district attorney of such county in writing of the facts that may have come to its knowledge, with a request that such assessor or deputy assessor be prosecuted, and the district attorney must at once comply with such request. En. March 12, 1872.

§ 3699. Clerk and members of board may administer oaths. The clerk or any member of the board may administer and certify oaths. En. March 12, 1872.

§ 3700. Salary of members and of clerk. The annual salary of each member of the board, except the state controller, is three thousand dollars, and the annual salary of the clerk of the board is eighteen hundred dollars, and each of said officers shall devote his entire time to the service of the state in performing the duties and acquiring the information required by this act. En. March 12, 1872. Rep. 1875-6, 14. En. Stats. 1880, 27.

§ 3701. Salary of clerk. The salary of the clerk of the state board of equalization is twenty-four hundred dollars per annum. En. March 12, 1872. Rep. 1875-6, 14. En. Stats. 1883, 374.

Sec. 2. So much of section 3700 of said code as conflicts with this act is repealed.

§ 3702. Traveling expenses, office and incidentals. The members of the board are entitled to their actual traveling expenses, and for contingent clerical assistance while traveling, incurred by them in the discharge of their duties, the amount to be audited and allowed by the board of examiners; and the sum of five thousand dollars for each fiscal year is hereby continuously appropriated out of the general fund of the state treasury, to pay the same. The secretary of state must assign an office for the board in the state capitol, in which must be transacted all its business, except as it in its nature must be transacted elsewhere. He must supply it with stationery, fuel, and light, and the superintendent of state printing must execute its orders for printing. En. March 12, 1872. Am'd. 1875-6, 13; 1880, 27; 1887, 56.

§ 3703. Official bonds of members of the board. (Repealed.) En. March 12, 1872. Rep. 1875-6, 14.

§ 3704. Duty of board upon failure of county boards to appoint assessors, etc. (Repealed.) En. March 12, 1872. Am'd. 1895, 318. Rep. 1901, 51.

Cal.Rep.Cit. 46, 506; 102, 447.

§ 3705. State board may extend time. The state board of equalization may, by an order entered upon its minutes, and certified to the county auditor of any county, extend, for not exceeding twenty days, the time fixed in this title for the performance of any act, by the county assessor, county auditor, or county boards of equalization. En. March 12, 1872. Am'd. 1895, 318.

Cal.Rep.Cit. 46, 506; 116, 353.

CHAPTER V.

LEVY OF TAXES.

§ 3713. Rate of taxation. Amounts required for the several funds.
§ 3714. Supervisors to regulate county rate of taxation.
§ 3715. When the supervisors fail to levy such taxes, etc.
§ 3716. Tax to operate as a judgment or lien against property.
§ 3717. Tax on personal property a lien on real property.
§ 3718. Tax upon real property and tax on improvements a lien upon both.
§ 3719. Levy of state school tax.

1905 252 **§ 3713. Rate of taxation. Amounts required for the several funds.** The state board of equalization must, for state purposes for the fifty-fifth and fifty-sixth fiscal years, fix such an ad valorem rate of taxation upon each one hundred dollars in value of taxable property in this state as, after allowing five per cent for delinquencies in and costs of collection of taxes, as provided in section three thousand six hundred and ninety-six of the Political Code, will raise for the fifty-fifth fiscal year:

First—For the general fund, five million two hundred thousand dollars.

Second—For the school fund, two million six hundred and seventeen thousand nine hundred and ninety-three dollars.

Third—For the interest and sinking fund, one hundred and forty-one thousand four hundred and thirty-five dollars.

And for the fifty-sixth fiscal year:

First—For the general fund, four million six hundred thousand dollars.

Second—For the school fund, two million six hundred

and seventeen thousand nine hundred and ninety-three dollars.

Third—For the interest and sinking fund, one hundred and forty-one thousand four hundred and thirty-five dollars. En. March 12, 1872. Am'd. 1871-2, 886; 1873-4, 160; 1875-6, 60; 1877-8, 67; 1880, 65; 1881, 123; 1885, 101; 1887, 151; 1889, 346; 1891, 470; 1893, 300; 1895, 161; 1897, 247; 1899, 131; 1901, 595; 1903, 335.

Cal.Rep.Cit. 60, 34; 80, 226; 87, 504.

§ 3714. Supervisors to regulate county rate of taxation. The board of supervisors of each county must, on the third Monday in September, fix the rate of county taxes, designating the number of cents on each one hundred dollars of property levied for each fund, and must levy the state and county taxes upon the taxable property of the county; provided, that it shall not be lawful for any board of supervisors of any county in the state to levy, nor shall any tax greater than fifty cents on each one hundred dollars of property be levied and collected in any one year, to pay the bonded indebtedness, or judgment arising therefrom, of this state, or of any county, or municipality in this state. En. March 12, 1872. Am'd. 1880, 16; 1880, 50; 1891, 445; 1895, 318.

Cal.Rep.Cit. 66, 23; 68, 498; 89, 230; 96, 626; 96, 637; 97, 436; 118, 480; 120, 341; 123, 155.

§ 3715. When the supervisors fail to levy such taxes, etc. The action of the state board of equalization, in fixing the rate of taxation for state purposes is, in the absence of action by the board of supervisors, a valid levy of the rate so fixed, and imposes upon the auditor, tax collector, and all other officers charged with the performance of any duties under the revenue law, the same obligations as if the board of supervisors had made the levy at the proper time. En. March 12, 1872.

Cal.Rep.Cit. 46, 506.

§ 3716. Tax to operate as a judgment or lien against property. Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof. En. March 12, 1872.

Cal.Rep.Cit. 62, 645; 71, 207; 73, 612; 83, 407; 92, 629; 105, 595; 115, 172; 115, 173; 115, 175; 115, 176; 115, 177; 115, 179; 116, 523; 118, 492; 118, 494; 137, 421.

§ 3717. Tax on personal property a lien on real property. Every tax due upon personal property is a lien upon the real property of the owner thereof, from and after 12 o'clock M. of the first Monday in March in each year. En. March 12, 1872. Am'd. 1873-4, 159; 1880, 16.

Cal.Rep.Cit. 71, 207; 73, 612; 76, 277; 83, 407; 92, 629; 115, 172; 115, 176; 118, 492; 118, 493; 123, 76.

§ 3718. Tax upon real property and tax on improvements a lien upon both. Every tax due upon real property is a lien against the property assessed; and every tax due upon improvements upon real estate assessed to others than the owner of the real estate, is a lien upon the land and improvements; which several liens attach as of the first Monday of March in each year. En. March 12, 1872.

Cal.Rep.Cit. 76, 277; 83, 407; 89, 201; 96, 626; 115, 172; 115, 176; 123, 76; 131, 110.

§ 3719. Levy of state school tax. The state board of equalization must levy annually, at the time other state taxes are levied, a tax of such number of cents on each one hundred dollars of value of taxable property in the state as will produce a net sum equal to the amount directed by the legislature as being necessary to be raised, by an ad valorem tax, for school purposes; and the assessment and collection of said tax shall be performed in the same manner and at the same time as other state taxes are assessed and collected. En. Stats. 1873-4, 84. Am'd. 1895, 318.

Cal.Rep.Cit. 87, 504.

CHAPTER VI.

DUTIES OF THE AUDITOR IN RELATION TO REVENUE.

§ 3727. Auditor to enter what in assessment book.
§ 3728. Auditor to prepare duplicate statement, showing what.
§ 3729. Statements transmitted to state controller and board of equalization.
§ 3730. Auditor to generally follow directions of state board of equalization.
§ 3731. Auditor to compute and enter taxes and foot up totals.
§ 3732. Delivery of duplicate assessment book to collector, and auditor's affidavit.
§ 3733. Auditor to retain original assessment book. (Repealed.)
§ 3734. Tax collector charged with full amount of taxes levied.
§ 3735. Auditor to verify all statements made by him.
§ 3736. Transfer of assessment book from one collector to another.
§ 3737. Auditor's statement, what must show; filing of.
§ 3738. Auditor to furnish assessor personal property receipts.
§ 3739. List of property redeemed.

§ 3727. Auditor to enter what in assesment book. The county auditor, as soon as the assessment book is delivered to him by the clerk of the board of supervisors, must proceed to add to the valuations, and enter the total valuation of each kind of property, and the total valuation of all property, on the assessment book. The column of acres must show the total acreage of the county. En. March 12, 1872.

§ 3728. Auditor to prepare duplicate statement, showing what. The auditor must, on or before the second Monday in August in each year, prepare from the "Assessment Book" of such year, as corrected by the board of supervisors, duplicate statements, showing in separate columns—

1. The number of acres of land.
2. The total value of all property.
3. The value of real estate.
4. The value of the improvements thereon.
5. The value of personal property, exclusive of money.
6. The amount of money.
7. The total assessed value of mortgages and trust deeds, with value of mortgages and trust deeds held by the various state institutions separately shown.
8. The assessed value of all property sold to the state for delinquent taxes. En. March 12, 1872. Am'd. 1891, 446; 1895, 318; 1897, 429.

Cal.Rep.Cit. 46, 505.

See post, sec. 3732.

§ 3729. Statements transmitted to state controller and board of equalization. The auditor must, as soon as such statements are prepared, transmit, by mail or express, one to the controller of state and one to the state board of equalization. En. March 12, 1872.

§ 3730. Auditor to generally follow directions of state board of equalization. As soon as the auditor receives from the state board of equalization a statement of the changes made by the board in the assessment book of the county, he must make the corresponding changes in the asssessment book, by entering the same in a column provided with a proper heading in the asssessment book, counting any fractional sum when more than fifty cents as one dollar, and

omitting it when less than fifty cents, so that the value of any separate assessment shall contain no fraction of a dollar; but he shall, in all cases, disregard any action of the board of supervisors which is prohibited by section three thousand six hundred and thirty-three of this code. En. March 12, 1872. Am'd. 1873-4, 147; 1875-6, 13; 1880, 16; 1895, 319.

Cal.Rep.Cit. 59, 333; 68, 498; 137, 252.

§ 3731. **Auditor to compute and enter taxes and foot up totals.** The auditor must then compute, and enter in a separate money column in the assessment book, the respective sums, in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated, and segregate and place in the proper columns of the book the respective amounts due in installments, as provided in section three thousand seven hundred and forty-six of this code, and foot up the column, showing the total amount of such taxes, and the columns of total value of property in the county, as corrected under the direction of the state board of equalization. En. March 12, 1872. Am'd. 1875-6, 14; 1880, 27; 1895, 319.

Cal.Rep.Cit. 68, 498; 118, 480; 120, 341.

§ 3732. **Delivery of duplicate assessment book to collector, and auditor's affidavit.** On or before the second Monday in October, he must deliver the corrected assessment book to the tax collector, with an affidavit attached thereto, and by him subscribed, as follows:

"I, ———, auditor of the county of ———, do swear that I received the assessment book of the taxable property from the clerk of the board of supervisors, with his affidavit thereto affixed, and that I have corrected it and made it to conform to the requirements of the state board of equalization; that I have reckoned the respective sums due as taxes, and have added up the columns of valuation, taxes, and acreage, as required by law." En. March 12, 1872. Am'd. 1873-4, 148; 1875-6, 14; 1880, 27; 1891, 446; 1895, 319; 1897, 430.

Cal.Rep.Cit. 66, 24; 118, 480; 137, 521; 137, 522.

§ 3733. **Auditor to retain original assessment book.** (Repealed.) En. March 12, 1872. Rep. 1895, 319.

§ 3734. **Tax collector charged with full amount of taxes levied.** On delivering the assessment book to the tax

collector, the auditor must charge the tax collector with the full amount of the taxes levied, except the taxes due upon the railway assessments made by the state board of equalization, and forthwith transmit by mail to the controller of state, in such form as the controller may prescribe, a statement of the amount so charged. Any auditor failing to forward such statement to the controller for ten days after the roll has been delivered to the tax collector, forfeits to the state one thousand dollars, to be recovered in an action brought by the attorney-general, in the name of the controller. En. March 12, 1872. Am'd. 1883, 72; 1895, 320; 1897, 430.

§ 3735. Auditor to verify all statements made by him. The auditor must verify, by his affidavit attached thereto, all statements made by him under the provisions of this title. En. March 12, 1872.

§ 3736. Transfer of assessment book from one collector to another. The auditor, if the assessment book or the delinquent tax list is transferred from one collector to another, must credit the one and charge the other with the amount then outstanding on the tax list. En. March 12, 1872. Am'd. 1895, 320.

§ 3737. Auditor's statement, what must show; filing of. The auditor must, on or before the meeting of the board of supervisors on the third Monday in September, prepare a statement, in duplicate, showing:

First—The indebtedness of the county, funded and floating, the amount of each class, and the rate of interest borne by each class of such indebtedness, or any part thereof.

Second—A concise description of all property owned by the county, with an approximate estimate of the value thereof, and the amount of cash in the county treasury subject to the payment of such indebtedness.

Third—The rate of taxation for county purposes, as shown by the last tax levy made by the board.

Fourth—The assessed value of all property, in detail, for the year.

Fifth—Such other information as the board of supervisors or the controller of state may require.

One of the statements mentioned in this section must be filed with the board on the third Monday in September and the other forwarded immediately, by mail or express, to the controller of state. The controller shall include in his biennial report to the governor a digest and synopsis, in tabular form, of all reports received by him under the provisions of this section. Any auditor failing to furnish such statement within the time prescribed by law, or to forward to the controller as herein directed, forfeits to the county one thousand dollars, to be recovered in an action brought by the district attorney in the name of the county. En. 1873-4, 156. Rep. 1895, 320. En. Stats. 1897, 430.

Cal.Rep.Cit. 76, 279.

§ 3738. **Auditor to furnish assessor personal property receipts.** On or before the first Monday in March of each year, the auditor shall furnish the assessor with blank "personal property" receipts in book form, with stubs attached, numbered the same as the receipts, each book having fifty receipts, in a form prescribed in section three thousand six hundred and forty, and charge the assessor with the number of receipts issued. On the first Monday in August, the assessor shall return all unused receipts, and the auditor shall credit him with the numbers returned. En. Stats. 1873-4, 156. Am'd. 1895, 320.

Cal.Rep.Cit. 66, 24.

§ 3739. **List of property redeemed.** On or before the hour of the day fixed by the tax collector for the sale of the property delinquent for taxes, the auditor must furnish such tax collector a report, in condensed form, of all property redeemed since the date of the tax sale for the preceding year. The tax collector must use such report in the enforcement of sections three thousand seven hundred and seventy-one, three thousand eight hundred and thirteen, and three thousand eight hundred and fourteen. En. Stats. 1897, 431.

CHAPTER VII.

COLLECTION OF PROPERTY TAXES.

§ 3746. Tax collector to publish notice, specifying what.
§ 3747. Taxes on any particular parcel of land may be paid separately.
§ 3748. Time and place of payment.
§ 3749. Manner of publication of notice.
§ 3750. Tax collector to note date of payment.
§ 3751. Receipt to be given.
§ 3752. Payment of taxes of decedents, how enforced.
§ 3753. Settlement of collector with auditor; when made; form of.
§ 3754. Liability of tax collector refusing or neglecting to settle.
§ 3755. Action against collector for such refusal or neglect.
§ 3756. When taxes are delinquent. Penalty.
§ 3757. Certain times when taxes must not be received. (Repealed.)
§ 3758. Entry of penalty for delinquency.
§ 3759. When delinquent list must be completed.
§ 3760. Matters to be set down in numerical or alphabetical order.
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§ 3746. Tax collector to publish notice, specifying what. Within ten days after the receipt of the assessment book, the tax collector must publish a notice specifying:

1. That the taxes on all personal property secured by real property, and one half of the taxes on all real property, will be due and payable on the second Monday in October, and will be delinquent on the last Monday in November next thereafter, at six o'clock P. M., and that unless paid prior thereto, fifteen per cent will be added to the amount thereof, and that if said one half be not paid before the last Monday in April next, at six o'clock P. M., an additional five per cent will be added thereto. That the remaining one half of the taxes on all real property will be payable on and after the first Monday in January next and will be delinquent on the last Monday in April next, thereafter, at six o'clock P. M., and that unless paid prior thereto, five per cent will be added to the amount thereof.

2. That all taxes may be paid at the time the first installment, as herein provided, is due and payable.

3. The times and places at which payment of taxes may be made. En. March 12, 1872. Am'd. 1875-6, 59; 1880, 65; 1891, 446; 1895, 320; 1897, 431.

Cal.Rep.Cit. 137, 521; 137, 522; 137, 523; 137, 524.

Acts providing for levy and collection of taxes: See General Laws, title Taxation.

Act requiring uniform method of collection of taxes: See General Laws, title Taxation.

§ 3747. Taxes on any particular parcel of land may be paid separately. The taxes on any particular lot, piece, or

parcel of land contained in any assessment may be paid separately from the whole assessment, if such lot, piece, or parcel has a separate valuation on the assessment roll, by paying the amount of state and county taxes due on such lot, piece, or parcel of land, with a proper proportion of the amounts due as tax on personal property, penalties, if any, and a proper proportion of the tax due to any school, road, or other lesser taxation district. The tax collector shall make an entry on the margin of the assessment book, showing what certain property has been released by the payment of the taxes as herein provided, together with the amounts of such taxes separately and specifically set forth. En. March 12, 1872. Am'd. 1877-8, 68; 1889, 217; 1895, 320; 1901, 648.

§ 3748. **Time and place of payment.** All taxes must be paid at the office of the tax collector, unless the board of supervisors by order, made on or before the first Monday in October, direct that the taxes must be collected in the several townships of the county, or in either thereof, or in any municipal corporation in said county; in which case the notice by the tax collector must specify a time and place within any township or municipal corporation named in such order, when and where the tax collector will attend to receive the payment of taxes. En. March 12, 1872. Am'd. 1889, 217; 1895, 321.

§ 3749. **Manner of publication of notice.** The notice in every case must be published for two weeks in some weekly or daily newspaper published in the county, if there is one; or if there is not, then by posting it in three public places in each township. En. March 12, 1872.

Cal.Rep.Cit. 53, 394.

§ 3750. **Tax collector to note date of payment.** The tax collector must mark the date of payment of any tax, or of the several partial payments, as the case may be, in the assessment book, opposite the name of the person paying. En. March 12, 1872. Am'd. 1891, 447.

§ 3751. **Receipt to be given.** He must give a receipt to the person paying any tax, or any part of any tax, specifying the amount of the assessment and the tax, or part of tax, paid, and the amount remaining unpaid, if any, with a

description of the property assessed; provided, that the receipt for the last installment of taxes may refer, by number or any other intelligent manner, to the receipt given for the first installment of taxes, in lieu of a description of the property assessed. En. March 12, 1872. Am'd. 1891, 447.

§ 3752. Payment of taxes of decedents, how enforced. The superior court must require every administrator or executor to pay out of the funds of the estate all taxes due from such estate; and no order or decree for the distribution of any property of any decedent among the heirs or devisees must be made until all taxes against the estate are paid. In the same manner the court must require the assignee to pay out of the funds of an insolvent's estate all taxes due from such estate; and no final discharge to such assignee shall be granted until all taxes against the insolvent's estate are paid. En. March 12, 1872. Am'd. 1880, 16; 1895, 321.

Cal.Rep.Cit. 71, 207; 93, 475; 133, 184.

Taxes paid by parties interested in estate inures to benefit of all: Ante, sec. 3642.

§ 3753. Settlement of collector with auditor; when made; form of. On the first Monday in each month the tax collector must settle with the auditor for all moneys collected for the state or county, and pay the same to the county treasurer, and on the same day must deliver to and file in the office of the auditor a statement, under oath, showing:

1. An account of all his transactions and receipts since his last settlement;

2. That all money collected by him as tax collector has been paid. En. March 12, 1872.

Cal.Rep.Cit. 52, 199; 122, 537; 122, 538; 126, 257.

§ 3754. Liability of tax collector refusing or neglecting to settle. A tax collector refusing or neglecting for a period of five days to make the payments and settlements required in this title, is liable for the full amount of taxes charged upon the assessment roll. En. March 12, 1872.

Cal.Rep.Cit. 122, 537; 122, 538.

§ 3755. Action against collector for such refusal or neglect. The district attorney must bring suit against the

tax collector and his sureties for such amount, and in case of neglect the controller of state or the board of supervisors may require him to do so; and when the suit is commenced, no credit or allowance must be made to the collector for the taxes outstanding. En. March 12, 1872.

Cal.Rep.Cit. 52, 200; 122, 537; 122, 538.

§ 3756. **When taxes are delinquent. Penalty.** On the last Monday of November of each year, at six o'clock P. M., all taxes then unpaid, except the last installment of the real property taxes are delinquent, and thereafter the tax collector must collect, for the use of the county, or city and county, an addition of fifteen per cent thereon; provided, that if they be not paid before the last Monday in April next succeeding, at six o'clock P. M., he shall collect an addition of five per cent thereon. On the last Monday in April of each year, at six o'clock P. M., all the unpaid portion of the remaining one half of the taxes on all real property are delinquent, and thereafter the tax collector must collect, for the use of the county, or city and county, an addition of five per cent thereon; provided, that the entire tax on any real property may be paid at the time the first installment, as above provided, is due and payable; and provided further that the taxes on all personal property unsecured by real property, shall be due and payable immediately after the assessment of said personal property is made. En. March 12, 1872. Am'd. 1875-6, 60; 1880, 16; 1891, 447; 1895, 321.

Cal.Rep.Cit. 76, 277; 76, 278; 137, 104; 137, 320; 137, 321; 137, 322.

§ 3757. **Certain times when taxes must not be received.** (Repealed.) En. March 12, 1872. Rep. 1873-4, 160.

§ 3758. **Entry of penalty for delinquency.** On the second Monday in December of each year, in each of the counties, and cities and counties of this state, the tax collector must attend at the office of the auditor with the assessment book, having all items of taxes collected marked "paid." The auditor shall thereupon compute and enter against all the items of taxes due and unpaid the penalty for delinquency, foot up the total amount of penalties then due, and must, within ten days thereafter, deliver to said tax collector the assessment book and charge him with the

amount of said penalties. En. March 12, 1872. Am'd. 1875-6, 61; 1891, 448; 1895, 322; 1897, 431.

Cal.Rep.Cit. 76, 8; 122, 538.

§ 3759. When delinquent list must be completed. On the third Monday in May of each year, in each of the counties and cities and counties of this state, the tax collector must attend at the office of the auditor with the assessment book, having all items of taxes and penalties collected marked "paid," and at the same time he shall deliver to the auditor a complete delinquent list of all persons and property then owing taxes. En. March 12, 1872. Am'd. 1895, 322.

Cal.Rep.Cit. 76, 8; 122, 538; 137, 249.

Publishing delinquent list: See post, sec. 3764.

§ 3760. Matters to be set down in numerical or alphabetical order. In the list so delivered must be set down in numerical or alphabetical order, all matters and things contained in the assessment book, and relating to delinquent persons or property. En. March 12, 1872.

Cal.Rep.Cit. 76, 8; 117, 518.

§ 3761. Credit to be given to tax collector on final settlement. The auditor must carefully compare the list with the assessment book, and if satisfied that it contains a full and true statement of all taxes due and unpaid, he must foot up the total amount of taxes so remaining unpaid, credit the tax collector who acted under it therewith, and make a final settlement with him of all taxes charged against him on the assessment book, and must require from him the treasurer's receipt, or if the treasurer is the collector, require from him an immediate account for any existing deficiency. En. March 12, 1872.

Cal.Rep.Cit. 76, 8; 122, 539.

§ 3762. Tax collector charged with delinquent taxes and penalty. After settlement with the tax collector, as prescribed in the preceding section, the auditor must charge the tax collector then acting with the amount of taxes due on the delinquent tax list, with the penalty or penalties added thereto, and within three days thereafter deliver the list, duly certified, to such tax collector. En. March 12, 1872. Am'd. 1895, 322.

Cal.Rep.Cit. 122, 539; 137, 249.

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§ 3763. Auditor's statement to state controller. Within ten days after the final settlement, the auditor must transmit, by mail or express, a statement to the controller of state, in such form as he requires, of each kind of property assessed and delinquent, and the total amount of delinquent taxes. If the auditor fails to transmit such statement in the time prescribed by law, he shall forfeit to the state one thousand dollars, to be recovered in an action brought by the attorney-general in the name of the controller. En. March 12, 1872. Am'd. 1897, 432.

Cal.Rep.Cit. 97, 447.

§ 3764. Publication of delinquent list. On or before the fifth day in June of each year the tax collector must publish the delinquent list, which must contain the names of the persons and a description of the property delinquent, and the amount of taxes, penalties, and costs due, opposite each name and description, with the taxes due on personal property, the delinquent state, poll, road, and hospital tax, the taxes due each school, road, or other lesser taxation district, added to the taxes on real estate, where the real estate is liable therefor, or the several taxes are due from the same person. The expense of the publication to be a charge against the county, or city and county. En. March 12, 1872. Am'd. 1875-6, 59; 1875-6, 61; 1877-8, 68; 1891, 448; 1895, 322.

Cal.Rep.Cit. 53, 393; 56, 116; 64, 470; 64, 471; 76, 277; 97, 284; 97, 447; 105, 586; 113, 166; 117, 518; 118, 495; 118, 496; 134, 255; 137, 249; 137, 250; 137, 464.

§ 3765. Notice of sale. The tax collector must append and publish with the delinquent list a notice that unless the taxes delinquent, together with the costs and penalties,* are paid, the real property upon which such taxes are a lien will be sold. En. March 12, 1872. Am'd. 1895, 18; 1895, 322.

Cal.Rep.Cit. 64, 470; 76, 277; 87, 504; 97, 447; 117, 518; 119, 684; 119, 685; 137, 250; 137, 464.

§ 3766. Manner of making publication. The publication must be made once a week for three successive weeks, in some newspaper, or supplement thereto, published in the county, and the board of supervisors must contract for such publication with the lowest bidder, and after ten

* Amended also February 25, 1895, reading "percentage" instead of "penalties." [Stats. 1895, p. 18.]

days' public notice, that such will be let. The bidding must be by sealed proposals. If there is no newspaper published in the county, then by posting a copy of the list in three public places in each township. En. March 12, 1872. Am'd. 1877-8, 69; 1895, 323.

Cal.Rep.Cit. 53, 394; 61, 526; 64, 470; 64, 471; 97, 284; 97, 285; 113, 165; 113, 166; 113, 167; 113, 168; 119, 455; 125, 43; 133, 283; 134, 55.

§ 3767. **Time and place of sale to be designated.** The publication must designate the day and hour when the property will, by operation of law, be sold to the state, which sale must not be less than twenty-one nor more than twenty-eight days from the time of the first publication, and the place shall be in the tax collector's office. En. March 12, 1872. Am'd. 1895, 323.

Cal.Rep.Cit. 61, 526; 137, 464.

§ 3768. **Sale, when and where to take place. (Repealed.)** En. March 12, 1872. Am'd. 1875-6, 62; 1887, 157. Rep. 1895, 323.

Cal.Rep.Cit. 61, 526; 108, 364; 118, 496; 134, 255.

§ 3769. **Copy of publication, with whom filed.** The collector, as soon as he has made the publication required in sections 3764, 3765, 3766, and 3767, must file with the county recorder and county clerk respectively, a copy of the publication, with an affidavit attached thereto that it is a true copy of the same; that the publication was made in a newspaper or supplement thereto, stating its name and place of publication, and the date of each appearance; and in case there was no newspaper published in his county, that notices were put up in three public places in each of the townships, designating the township and places therein, which affidavit is primary evidence of all the facts stated therein. En. March 12, 1872.

Cal.Rep.Cit. 97, 447; 137, 249.

Primary evidence, changed to prima facie in post, sec. 3788, as amended February 25, 1895, and sec. 3789.

§ 3770. **Additional sum collected to defray costs.** The tax collector must collect, in addition to the taxes due on the delinquent list, together with the penalties for delinquency, fifty cents on each lot, piece, or tract of land separately assessed, and on each assessment of personal

property, which shall be paid to the county and be placed to the credit of the salary fund. En. March 12, 1872. Am'd. 1895, 323.

Cal.Rep.Cit. 51, 638; 97, 601; 97, 603; 99, 595; 99, 596; 137, 320; 137, 322.

§ 3771. Property sold to state by operation of law. On the day and hour fixed for the sale all the property delinquent, upon which the taxes of all kinds, penalties, and costs have not been paid, shall by operation of law and the declaration of the tax collector, be sold to the state, and said tax collector shall make an entry, "Sold to the state," on the delinquent assessment list, opposite the tax, and he shall be credited with the amount thereof in his settlement, made pursuant to sections three thousand seven hundred and ninety-seven, three thousand seven hundred and ninety-eight, and three thousand seven hundred and ninety-nine; provided, that on the day of sale the owner or person in possession of any property offered for sale for taxes due thereon, may pay the taxes, penalties, and costs due; and provided further, that when the original tax amounts to the sum of three hundred dollars or more upon any piece of property or assessment delinquent, the state may bring suit against the owner of said property for the collection of said tax or taxes, penalties, and costs, as provided in section three thousand eight hundred and ninety-nine. En. March 12, 1872. Am'd. 1895, 323.

Cal.Rep.Cit. 73, 51; 126, 445; 126, 446; 137, 464.

§ 3772. Statement of sales. Immediately upon completion of the sale provided for in the preceding section, the tax collector must, by mail or express, transmit to the controller a statement or report in such form as the controller may desire, showing in detail each sale wherein the state became such purchaser. En. March 12, 1872. Am'd. 1895, 323.

Cal.Rep.Cit. 97, 447; 137, 465.

§ 3773. Sale of property. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 148; 1893, 99; 1895, 19. Rep. 1895, 324.

Cal.Rep.Cit. 73, 51; 80, 396; 99, 80; 105, 586; 106, 131; 106, 186; 117, 519; 117, 698; 119, 684; 137, 322.

The original section provided for the designation by the owner of the property to be sold. There was a section 3773 adopted at the same session as the above repealing act (p. 19), as follows:

On the day of sale the owner or person in possession of any real estate offered for sale for taxes due thereon, may pay the taxes and costs due; but in case such taxes and costs are not paid by the owner or person in possession, or by some one on behalf of such owner or person in possession, the whole amount of the property assessed shall be struck off to the people of the state as the purchaser; provided, that when the said taxes amount to the sum of three hundred dollars or more, upon any piece of property, the state may bring suit against the owner of said property for the collection of said taxes and costs, as provided in section three thousand eight hundred and ninety-nine of this code. In each case the tax collector shall make an entry, "Sold to the state," on the delinquent assessment book opposite the tax, and he shall be credited with the amount thereof in his settlement made pursuant to sections thirty-seven hundred and ninety-seven, thirty-seven hundred and ninety-eight, and thirty-seven hundred and ninety-nine of this code.

§ 3774. Idem. (Repealed.) En. March 12, 1872. Rep. 1895, 19; 1895, 324.

Cal.Rep.Cit. 99, 81.

§ 3775. Idem. (Repealed.) En. March 12, 1872. Rep. 1895, 19; 1895, 324.

Cal.Rep.Cit. 106, 133.

§ 3776. Collector to give purchaser a certificate of tax sale. The tax collector must make out a certificate of delinquent tax sale for each piece or tract of land sold, dated on the day of the sale, stating (when known) the name of the person assessed, a description of the land sold, that it was sold for delinquent taxes to the state, and giving the amount and year of the assessment, and specifying when the state will be entitled to a deed. En. March 12, 1872. Am'd. 1895, 324. Rep. 1895, 19. En. Stats. 1897, 432.

Cal.Rep.Cit. 54; 523; 56, 116; 61, 526; 67, 484; 67, 489; 72, 35; 78, 148; 79, 139; 80, 395; 92, 386; 94, 659; 99, 81; 102, 518; 117, 519; 118, 624; 119, 684; 131, 83; 137, 465.

§ 3777. Record of certificates of tax sale. Such certificate must be signed by the tax collector, regularly numbered in a book, and the book must be filed in the

office of the county recorder, and when so filed, with the recorder's filing on each certificate in said book, it must be regarded as recorded in the recorder's office. The state controller shall prescribe the form of such certificate of sale and record book. The recorder must index such certificates of sale in an index book, kept for that purpose, the form of which shall be prescribed by the state controller. In case of a redemption, or a subsequent sale of any of said property by the state, the recorder must enter on the margin of the certificate, describing such property in said certificate book of record in his office the fact of such redemption or sale, giving the date thereof, and by whom redeemed. En. March 12, 1872. Am'd. 1895, 324. Rep. 1895, 19. En. Stats. 1897, 432.

Cal.Rep.Cit. 54, 523; 131, 84; 137, 465.

§ 3778. Collector to enter in a book description, etc., of land sold. (Repealed.) En. March 12, 1872. Am'd. 1895, 19. Rep. 1895, 324. During the same session in which this section was repealed, an amendment to the section was approved (p. 19), as follows:

The collector must, in a book provided for that purpose, enter a description of the land sold, corresponding to the description in the original assessment roll, the date of sale, that it was sold to the state, the amount for which it was sold, and must regularly number the descriptions on the margin of the book. Such book must be open to public inspection, without fee, during office hours, when not in actual use.

Cal.Rep.Cit. 131, 83.

§ 3779. Lien of state vests in purchaser; how divested. (Repealed.) En. March 12, 1872. Rep. 1895, 19; 1895, 324.

Cal.Rep.Cit. 53, 236; 131, 84.

§ 3780. Time for redemption of property. A redemption of the property sold may be made by the owner, or any party in interest, within five years from the date of the sale to the state, or at any time prior to the entry or sale of said land, by the state, in the manner provided by section three thousand eight hundred and seventeen. En. March 12, 1872. Am'd. 1873-4, 157; 1875-6, 62; 1885, 91; 1891, 133; 1895, 19; 1895, 324.

Cal.Rep.Cit. 92, 387; 96, 503; 104, 620; 117, 519; 117, 698; 137, 465; 137, 466.

At the same session (p. 19) this section was also amended to read as follows:

A redemption of the property sold may be made by the owner, or any party in interest, within five years from the date of the purchase by the state, or at any time prior to the entry or sale of said land in the manner applicable to other state lands of like character.

§ 3781. Redemption, how made. Distribution of proceeds. Redemption must be made to the county treasurer on an estimate furnished by the auditor, in lawful money of the United States, and the treasurer must account to the state for all moneys received under such redemption, which said money shall be distributed in the manner provided by section three thousand eight hundred and sixteen. En. March 12, 1872. Am'd. 1873-4, 157; 1895, 19; 1895, 324.

An amendment of February 28, 1895, Stats. 1895, p. 19, of the same section, was same as above, except the words "on an estimate furnished by the auditor."

§ 3782. Redemption. (Repealed.) En. March 12, 1872. Rep. 1895, 20.

§ 3783. Idem. (Repealed.) En. March 12, 1872. Rep. 1895, 20.

§ 3784. Idem. (Repealed.) En. March 12, 1872. Rep. 1895, 20.

§ 3785. Collector's deed when property is not redeemed in time. If the property is not redeemed within the time allowed by law for its redemption, the tax collector, or his successor in office, must make the state a deed of the property, reciting in such deed the name of the person assessed (when known), the date of sale, a description of the land sold, the amount for which it was sold, that it was sold for delinquent taxes, giving the assessed value and the year of assessment, the time when the right of redemption had expired, and that no person has redeemed the property in the time allowed by law for its redemption. No charge shall be made by the tax collector for the making of any such deed, and the acknowledgment of all such deeds shall be taken by the county clerk free of charge. All such deeds shall be recorded in the office of the county recorder of the county wherein the property

sold is situated, and said recorder shall make no charge therefor; provided, that in counties where the county recorders are paid no salaries, but fees only, such recorders shall receive for filing, recording and indexing each deed, the sum of seventy-five cents, payable out of the county treasury in the same manner that other claims are paid. The state controller shall provide uniform blank deeds, upon which all conveyances to the state under the provisions of this section shall be made. All such deeds, after being duly recorded, as herein provided, shall be forwarded by the county recorder to the controller. The controller shall record such deeds at length in a book to be provided for that purpose, in which book a marginal space shall be left to show the subsequent disposition of the property by the state; provided, however, that when state lands have been sold to the state upon which the full purchase price of one dollar and twenty-five cents per acre has not been paid, the deeds to the state, after being duly recorded as herein provided, shall be forwarded by the county recorder to the surveyor-general and remain on file in his office, and the state shall dispose of such lands in the manner provided in section three thousand seven hundred and eighty-eight. In all cases where land has heretofore been sold to the state for delinquent taxes, the deed therefor shall be made to the state within one year after this act takes effect; provided, five years shall have elapsed after the date of such sale. En. March 12, 1872. Am'd. 1873-4, 157; 1875-6, 62; 1885, 90; 1891, 134; 1895, 20; 1895, 324; 1901, 52.

Cal.Rep.Cit. 79, 538; 79, 539; 86, 125; 86, 126; 86, 127; 90, 485; 92, 386; 92, 387; 93, 396; 93, 399; 96, 502; 96, 508; 97, 446; 97, 447; 102, 518; 102, 519; 104, 620; 106, 130; 106, 131; 106, 132; 106, 135; 106, 136; 106, 137; 107, 515; 107, 517; 117, 519; 117, 698; 117, 701; 118, 625; 118, 626; 119, 684; 134, 595; 135, 185; 137, 465.

§ 3786. Recitals in deed primary evidence of what. The matters recited in the certificate of sale must be recited in the deed, and such deed, duly acknowledged or proved, is primary evidence that:

1. The property was assessed as required by law;
2. The property was equalized as required by law;
3. The taxes were levied in accordance with law;
4. The taxes were not paid;
5. At a proper time and place the property was sold as prescribed by law, and by the proper officer;

6. The property was not redeemed;

7. The person who executed the deed was the proper officer;

8. Where the real estate was sold to pay taxes on personal property, that the real estate belonged to the person liable to pay the tax. En. March 12, 1872.

Tax certificate, what must contain: Ante, sec. 3776.

Cal.Rep.Cit. 53, 180; 53, 394; 54, 523; 67, 489; 78, 148; 79, 139; 80, 395; 92, 386; 93, 396; 94, 659; 96, 378; 96, 379; 96, 504; 102, 518; 108, 363; 117, 703; 118, 624; 119, 684; 119, 685; 122, 542; 130, 132; 130, 133; 131, 84; 132, 513.

§ 3787. Deed conclusive evidence of what. Such deed, duly acknowledged or proved, is (except as against actual fraud) conclusive evidence of the regularity of all other proceedings, from the assessment by the assessor, inclusive, up to the execution of the deed. Such deed conveys to the state the absolute title to the property described therein, free of all incumbrances, except when the land is owned by the United States, or this state, in which case it is prima facie evidence of the right of possession, accrued as of the date of the deed to the state. En. March 12, 1872. Am'd. 1895, 325.

Cal.Rep.Cit. 96, 378; 96, 379; 96, 381; 96, 504; 97, 447; 108, 363; 119, 684; 119, 685; 122, 542; 130, 132; 130, 133; 131, 84.

§ 3788. State lands not paid for in full subject to entry and sale. When state lands, upon which the full purchase price of one dollar and twenty-five cents per acre has not been paid, and the deed therefor to the state provided for in section three thousand seven hundred and eighty-five has been forwarded to and filed with the surveyor-general, the said lands shall again become subject to entry and sale, in the same manner, and subject to the same conditions, as apply to other state lands of like character, except that the former possessors of the lands thus deeded to the state, their heirs or assigns, shall be preferred purchasers thereof for the period of six months after the deeds are filed with the surveyor-general; but the surveyor-general shall not permit an entry, or make a sale of any lands thus deeded to the state, except upon the previous payment into the state treasury, as other moneys are required to be paid therein, in addition to the price of said lands as compared with the price fixed for other state

lands of like character, by the person or persons proposing to make the entry or purchase, of a sum equal to the delinquent taxes, penalties, costs, and accruing costs, by virtue whereof the state became a purchaser of the lands thus sought to be entered or purchased, and also all delinquent taxes, penalties, and costs, which may have accrued upon such lands prior to and subsequent to the date of the sale to the state, in pursuance of which the state received a deed therefor. The money thus paid into the treasury shall be distributed in the manner prescribed in section three thousand eight hundred and sixteen; provided, that the moneys received for twenty per cent of the purchase money and accruing interest, together with the principal, in case of full payment on the lands, shall be distributed by the surveyor-general, in the manner now provided by law for such distribution. En. March 12, 1872. Am'd. 1873-4, 54; 1875-6, 63; 1885, 3; 1895, 20; 1895, 325.

Cal.Rep.Cit. 104, 447; 104, 448; 104, 450; 117, 698; 117, 699; 118, 494; 118, 495; 131, 82; 138, 125.

There was also adopted at the same session another section 3788 (p. 20), as follows:

Such deed conveys to the state the absolute title to the property described therein, as of the date of the expiration of the period of five years from the date of the sale of said property to the state, free of all incumbrances, except when the land is owned by the United States or this state, in which case it is prima facie evidence of the right of possession, accrued as of the date of the deed to this state. All said deeds when recorded by the recorders of the several counties, as prescribed in section thirty-seven hundred and eighty-five of this code, shall be duly certified by such county recorder, and shall be duly filed in the office of the surveyor-general, and thereupon the land shall again become subject to entry and sale in the same manner, and subject to the same conditions, as apply to other state lands of like character, except that the former possessors of lands thus deeded to the state, their heirs or assigns, shall be preferred purchasers thereof for the period of six months after the deeds are filed with the surveyor-general, as prescribed in this section; but the surveyor-general shall not permit an entry, or make a sale of any lands thus deeded to the state, except upon the

previous payment into the state treasury, in addition to the price of said lands, as compared with the price fixed for other state lands of a like character, by the person or persons proposing to make the entry or purchase, of a sum equal to the delinquent taxes, costs, and penalties, by virtue whereof the state became a purchaser of the lands thus sought to be entered or purchased, and also all delinquent taxes, costs, and penalties which may have accrued upon such lands subsequent to the date of the sale to the state, in pursuance of which the state received a deed therefor. The money thus paid into the state treasury shall be distributed in the manner prescribed in section thirty-eight hundred and sixteen of this code. In all cases where land has heretofore been sold to the state for delinquent taxes, the deed therefor shall be made within one year after this act takes effect; provided, five years shall have elapsed after the date of such sale.

§ 3789. **Prima facie evidence of assessment; what constitutes.** The assessment book, or delinquent list, or copy thereof, certified by the county auditor, showing unpaid taxes against any person or property, is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of law in relation to the assessment and levy of taxes have been complied with. En. March 12, 1872. Am'd. 1873-4, 149; 1895, 326.

Cal.Rep.Cit. 96, 636.

§ 3790. **Seizure and sale of personal property for taxes.** The tax collector of each county, and city and county, shall have power, and it is hereby made his duty at any time after receiving from the county auditor the assessment books in pursuance of the provisions of section thirty-seven hundred and thirty-two of the Political Code, to collect the taxes due on personal property, except when real estate is liable therefor, by seizure and sale of any personal property owned by the delinquent. En. March 12, 1872. Am'd. 1875-6, 61; 1895, 326; 1901, 649.

See post, secs. 3820 et seq., as to collection of taxes by assessor.

§ 3791. **Manner of conducting sale, etc.** The sale must be at public auction, and of a sufficient amount of the

property to pay the taxes, percentage, and costs. En. March 12, 1872.

§ 3792. Sale must be made after notice. The sale must be made after one week's notice of the time and place thereof, given by publication in a newspaper in the county, or by posting in three public places. En. March 12, 1872.

Cal.Rep.Cit. 53, 394.

§ 3793. Collector's charges and mileage. For seizing or selling personal property, the assessor may charge in each case the sum of three dollars, and the same mileage as is allowed by law to the sheriff of the county. En. March 12, 1872. Am'd. 1895, 326.

§ 3794. Title vests in purchaser on payment. On payment of the price bid for any property sold, the delivery thereof with a bill of sale, vests the title thereto in the purchaser. En. March 12, 1872.

§ 3795. Excess of proceeds; disposition of. All excess over the taxes, per cent, and costs of the proceeds of any such sale, must be returned to the owner of the property sold, and until claimed must be deposited in the county treasury, subject to the order of the owner, heirs, or assigns. En. March 12, 1872.

§ 3796. Unsold portion to remain at risk of owner. The unsold portion of any property may be left at the place of sale at the risk of the owner. En. March 12, 1872.

§ 3797. Comparison of delinquent list with unpaid assessments. The tax collector must, on or before the last day in June of each year, attend at the office of the auditor with the delinquent list, with all items collected marked "paid" thereon, and the auditor must then carefully compare the list with the assessment of persons and property not marked "paid" on the assessment book, and when taxes have been paid, must note the fact in the appropriate column in the assessment book. En. March 12, 1872. Am'd. 1891, 449; 1895, 326.

Cal.Rep.Cit. 46, 529; 66, 25; 118, 496.

§ 3798. Oath administered to tax collector. The auditor must then administer to the tax collector an oath, to be written and subscribed in the delinquent list, that every

person and all property assessed in the delinquent list on which taxes have been paid has been credited in the list with such payment. En. March 12, 1872.

§ 3799. Final settlement of collector with auditor. The auditor must then foot up the amount of taxes unpaid, and credit the tax collector with the amount, and have a final settlement with him; and the delinquent list must remain on file in the auditor's office. En. March 12, 1872. Am'd. 1875-6, 59; 1895, 327.

§ 3800. Collector's affidavit, indorsed on list. At the time mentioned in section three thousand seven hundred and sixty-four the tax collector must make an affidavit, indorsed on the list, that the taxes not marked "paid" have not been paid. En. March 12, 1872. Am'd. 1891, 449; 1895, 327.

§ 3801. List of lands sold. It shall be the duty of the tax collector, within thirty days after the sale of any land for delinquent taxes, to furnish to the auditor the complete printed list of all such lands so sold, and thereupon the auditor shall enter upon the assessment book of the current year, immediately after the description of the property, the fact that said property has been sold for taxes, and the date of such sale. En. March 12, 1872. Rep. 1873-4, 150. En. Stats. 1895, 21; 1895, 327. Am'd. 1897, 432.

Cal.Rep.Cit. 46, 529.

§ 3802. Unpaid taxes not canceled to be entered. (Repealed.) En. March 12, 1872. Rep. 1875-6, 59.

Cal.Rep.Cit. 46, 527.

§ 3803. Idem. (Repealed.) En. March 12, 1872. Rep. 1895, 327.

Cal.Rep.Cit. 53, 236; 66, 25; 68, 16; 68, 553; 76, 272; 76, 276; 105, 595.

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§ 3804. Taxes illegally collected to be refunded. Any taxes, penalties or costs thereon paid more than once, or erroneously or illegally collected, or any taxes paid upon an assessment in excess of the actual cash value of the property so assessed, by reason of a clerical error of the assessor, as to the excess in such cases, or any tax paid upon an erroneous assessment of improvements on real estate not in fact in existence when said tax became a lien, may, by order of the board of supervisors, be refunded by the county treasurer. Whenever any payment shall have

been made to the state treasurer, by the county treasurer, as provided by section thirty-eight hundred and sixty-five and section thirty-eight hundred and sixty-six of this code and it shall afterwards appear to the satisfaction of the board of supervisors that a portion of the money so paid should be refunded as herein provided, said board of supervisors may refund such portion of the said taxes, penalties and costs so paid to the said treasurer to the person entitled to the same out of the general fund, and upon the rendering of the report required by section thirty-six hundred and sixty-eight of this code, the auditor shall certify to the controller, in such form as the controller may prescribe, all amounts so refunded, and in the next settlement of the county treasurer with the state, the controller, if satisfied of the legality of such refunding, by the said board, shall give such treasurer credit for the state's portion of the amounts so refunded as prescribed in section thirty-eight hundred and seventy-one of this code; provided further, that where the taxes, penalties and costs herein referred to are levied in behalf of any school district, municipality, or other public or municipal corporation, and said corporation has money in the county treasury, said order to refund shall not be made except upon a certified copy of an order of the governing body of such corporation authorizing said repayment, in which case the amount refunded shall be paid by the county treasurer from the county fund of such school district, or from the appropriate fund of such corporation; provided further, however, that no order of the board of supervisors to refund taxes, penalties or costs shall be made except upon a verified claim therefor filed within six months after the making of the payment sought to be refunded, or, in the case of a double payment of taxes, within two years after such payment. En. March 12, 1872. Am'd. 1889, 347; 1895, 327; 1901, 648.

Cal.Rep.Cit. 59, 457; 67, 504; 68, 242; 68, 575; 99, 77; 99, 78; 99, 80; 99, 81; 117, 467; 117, 469; 134, 474; 134, 476.

§ 3805. When land assessed more than once. When the tax collector discovers that any property has been assessed more than once for the same year, he must collect only the tax justly due and make return of the facts, by his certificate, to the auditor and board of supervisors; the

board shall thereupon enter an order upon its minutes directing the auditor to cancel such double assessment by an entry on the margin of the assessment book, as also upon the delinquent list, should such double assessment be carried therein. If the property assessed under such double assessment has been sold to the state, and a certificate of sale or deed therefor has been issued to the state, the order of the board shall further direct the county recorder to cancel such erroneous certificate of sale and deed so issued, before the state has disposed of the property thereby conveyed; provided, no cancellation of a double assessment, certificate of sale or deed shall be made in any case until the taxes, penalties, costs and other charges by law against the property on one of such assessments shall have been paid.

In case the tax collector issues an erroneous certificate of sale, or deed, to any property upon which the taxes have been fully paid for the year therein mentioned, such fact shall be certified to the board of supervisors by the auditor and tax collector, and thereupon said board shall make and enter in its minutes an order authorizing the county recorder to cancel such erroneous certificate or deed.

Whenever a sale of property has been made for the non-payment of a poll tax unlawfully assessed, or which, if lawfully assessed, has been paid and payment has not been properly noted, the board of supervisors may, upon proof thereof, by an order entered upon its minutes, direct the county recorder to cancel the certificate of sale or deed issued to the state under such sale, so far as the same relates to said poll tax, at any time before the state has disposed of such property; provided, that where real property other than that belonging to a person liable for poll tax on the first Monday of March of the year in which such poll tax became due, has been erroneously sold for the poll tax of such person, the board of supervisors, upon satisfactory proof of ownership of the said property, may order the certificate of sale or deed canceled; provided further, however, that no such order shall be made if the person liable for said poll tax owned any interest whatever in said property on said first Monday in March, when said tax became due, or owned any interest therein at the time of the application for such cancellation. En. March 12, 1872. Am'd. 1895, 328; 1897, 433; 1901, 649.

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§ 3805a. Public lands upon which final payment not made. Whenever the possessory interest in land belonging to the United States, or land upon which final payment had not, at the time of assessment, been made to the United States, or land of this state upon which the full purchase price has not or had not been made to the state, has been, or may hereafter be, assessed and sold to the state for delinquent state, county or local district taxes, or whenever the taxes levied against any such possessory interests in lands, or against any such state lands, have not been paid, the board of supervisors shall, upon application of the owner of the land, by an order entered upon its minutes, direct the auditor to cancel such assessment; and if the property under such assessment has been sold to the state, and a certificate of sale or deed thereon issued to the state, such order of the board shall further direct the recorder to cancel such certificate of sale and deed; provided, that no order to cancel any such assessments, certificates of sale or deeds shall be made where the person or persons to whom such land or possessory interests, or state lands, his or their successors or assigns, have, after such assessment, obtained from the United States or this state a patent or the absolute title to said lands or retain any interest therein. Before an order to cancel such assessment, certificate of sale or deed shall be granted, the applicant shall file with the board a certificate of the register of the United States land office, or of the state land office, showing that the person or persons to whom such assessment was made, his or their successors and assigns, never received a patent or otherwise acquired title to said lands. Upon effecting the cancellations provided for in this and the preceding section, all assessments, certificates of sale and deeds the subject of such cancellation shall be null and void. En. Stats. 1901, 650.

§ 3805b. Clerical errors in certificate of sale, correction of. When real property has been correctly assessed and sold to the state for delinquent state and county taxes, any misstatement of facts or clerical errors occurring or appearing in the certificate of sale, or in the deed issued thereon, may be corrected by the tax collector, or his successor in office, upon an order of the board of supervisors, entered upon its minutes directing

tion, by the issuance of a new or amended certi- of sale, or tax deed, when it can be determined by the assessment and subsequent proceedings what was originally intended. When a new or amended certificate of sale or tax deed is issued under these provisions, such certificate or deed shall be in letters and figures, as far as practicable, the same as the original, excepting as to the correction of the error or omission, and shall also contain a statement giving reasons for the issuance of the new or amended certificate of sale or deed.. The provision herein relative to correction of errors in certificates of sale and deeds shall apply only to all sales of property heretofore or hereafter made wherein the state was or is the purchaser. When any deed to the state is canceled under this or the preceding two sections, and the deed has been filed with the controller, the recorder shall immediately notify the controller of such cancellation. En. Stats. 1901, 651.

§ 3806. Land irregularly assessed, etc., not to be sold. If the collector discovers before the sale that on account of irregular assessment, or of any other error, any land ought not to be sold, he must not offer the same for sale; and the board of supervisors must cause the assessor to enter the uncollected taxes upon the assessment book of the next succeeding year, to be collected as other taxes entered thereon. En. March 12, 1872.

§ 3807. What mistakes do not affect sale of property for taxes. When land is sold for taxes correctly imposed as the property of a particular person, no misnomer of the owner, or supposed owner, or other mistake relating to the ownership thereof, affects the sale, or renders it void or voidable. En. March 12, 1872.

§ 3808. Collection of taxes from persons assessed, but removed to another county. If any person removes from one county to another, after being assessed on personal property, the assessor of the county in which he was assessed may employ an attorney to sue for and collect the same in the assessor's name; but such assessor shall not be relieved from the provisions of this chapter. En. March 12, 1872. Am'd. 1895, 328.

Tax suits, generally: See post, sec. 3899.

§ 3809. Evidence on trial of suit for such taxes. On the trial a certified copy of the assessment, signed by the auditor of the county where the same was made, with the affidavit of the collector thereto attached, that the tax has not been paid, describing it as on the assessment book or delinquent list, is primary evidence that such tax and the per centum is due, and entitles him to judgment, unless the defendant proves that the tax was paid. En. March 12, 1872. (See secs. 3788-9.)

§ 3810. Expenses of proceedings, how paid. (Repealed.) En. March 12, 1872. Rep. 1895, 328.

§ 3811. When assessments void in part. (Repealed.) En. Stats. 1873-4, 150. Rep. 1895, 328.

Cal.Rep.Cit. 51, 638; 53, 235.

§ 3812. Duty when sale protested against. (Repealed.) En. Stats. 1873-4, 150. Rep. 1895, 328.

Cal.Rep.Cit. 73, 613.

§ 3813. Property sold to state assessed subsequently. In case property assessed for taxes is purchased by the state, pursuant to provisions of section three thousand seven hundred and seventy-one* of this code, it shall be assessed each subsequent year for taxes until a deed is made to the state therefor in the same manner as if it had not been so purchased. En. Stats. 1873-4, 151. Am'd. 1895, 21; 1895, 328.

§ 3814. After sold to state no sale to be had for assessments. In case an assessment is made under the provisions of section three thousand eight hundred and thirteen of this code, and the lands are not redeemed from a previous sale had under section three thousand seven hundred and seventy-one, as provided by law, no sale shall be had under the assessment authorized by said section three thousand eight hundred and thirteen. En. Stats. 1873-4, 151. Am'd. 1895, 329.

§ 3815. All costs must be paid before redemption. In case property is sold to the state, pursuant to section three thousand seven hundred and seventy-one of this

* Amendment of February 25, 1895, Stats. 1895, p. 21, of the same section read "3773" instead of "3771."

code, and is subsequently assessed pursuant to section three thousand eight hundred and thirteen of this code, no person shall be permitted to redeem from such sale, except upon payment of the amount of such subsequent assessments, costs, fees, penalties, and interest. En. Stats. 1873-4, 151. Am'd. 1895, 329.

Cal.Rep.Cit. 137, 104.

§ 3816. Distribution of redemption moneys. Whenever property sold to the state, pursuant to the provisions of this chapter, shall be redeemed as herein provided, the moneys received on account of such redemption shall be distributed as follows:

The original and subsequent taxes, and percentages, penalty, and the interest paid on redemption, shall be apportioned between the state and county, or city and county, in the same proportion that the state rate bears to the county, or city and county rate of taxation; the additional penalties received on account of delinquency together with the costs shall be paid into the treasury for the use and benefit of the county, or city and county; the total amount received for state poll tax shall be paid to the state, without deduction of any percentages; the amounts received for road or hospital poll tax, and the amounts received for school, or road district, or other taxes, together with the penalties thereon, shall be paid into the county treasury and placed to the credit of the proper funds. The county treasurer and auditor shall each keep an accurate account of any and all moneys received in pursuance of this section, and shall at the time the treasurer is required to settle with the state, in pursuance of sections three thousand eight hundred and sixty-five, three thousand eight hundred and sixty-six, and three thousand eight hundred and sixty-eight, make a detailed report, verified by their affidavit, of each account, year for year, to the controller of state, in such form as the controller may desire. En. Stats. 1873-4, 152. Am'd. 1877-8, 65; 1891, 449; 1895, 21; 1895, 329.

Cal.Rep.Cit. 106, 134.

At the same session there was adopted another section 3816, reading as follows:

Whenever property sold to the state, pursuant to the provisions of this chapter, shall be redeemed as herein

provided, the moneys received on account of such redemption shall be distributed as follows: The original and subsequent taxes, and all percentages and penalties paid in redemption, except as hereinafter provided, shall be apportioned between the state and county, in the same proportion that the state tax bears to the county tax; the five per cent additional, and the money received for delinquent poll tax, shall be paid to the county; the percentage allowed for the collection of the delinquent poll tax shall be paid to the collector, and the costs to the parties entitled thereto. The county treasurer shall keep an accurate account of all money paid in redemption of property sold to the state, and shall, on the first Monday of June in each year, make a detailed report, verified by his affidavit, of each account, year for year, to the controller of state, in such form as the controller may desire. Whenever the state shall receive from the tax collector any grant of property so sold for taxes, the same shall be recorded, at the request of the county treasurer, free of charge, by the county recorder, and shall be immediately reported by the county treasurer to the state board of equalization. [Amendment approved February 25, 1895, Stats. 1895, p. 21. In effect immediately.]

§ 3817. Redemption by heirs, executors et al. In all cases where real estate has been or may hereafter be sold for delinquent taxes to the state, and the state has not disposed of the same, the person whose estate has been, or may hereafter be sold, his heirs, executors, administrators, or other successors in interest, shall, at any time after the same has been sold to the state, and before the state shall have disposed of the same, have the right to redeem such real estate by paying to the county treasurer of the county wherein the real estate may be situated, the amount of taxes, penalties and costs due thereon at the time of said sale, with interest on the aggregate amount of said taxes, penalties and costs at the rate of seven per cent per annum; and also all taxes that were a lien upon said real estate at the time said taxes became delinquent; and also all unpaid taxes of every description assessed against the property for each year since the sale; or, if not so assessed, then upon the value of the property as assessed in the year nearest

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the time of such redemption, with interest from the first day of July following each of said years, respectively, at the same rate, to the time of redemption; and also all costs and expenses of such redemption, and penalties as follows, to wit: Ten per cent, if redeemed within six months from the date of sale; twenty per cent, if redeemed within one year therefrom; forty per cent, if redeemed within two years therefrom; sixty per cent, if redeemed within three years therefrom; eighty per cent, if redeemed within four years therefrom; and one hundred per cent, if redeemed within five or any greater number of years therefrom. The penalty shall be computed upon the amount of each year's taxes in like manner, reckoning from the time when the lands would have been sold for the taxes of that year, if there had been no previous sale thereof. The county auditor shall, on the application of the person desiring to redeem, make an estimate of the amount to be paid, and shall give him triplicate certificates of the amount, specifying the several amounts thereof, which certificates shall be delivered to the county treasurer, together with the money, and the county treasurer shall give triplicate receipts, written or indorsed upon said certificates, to the redemptioner, who shall deliver one of said receipts to the state controller, and one to the county auditor, taking their receipts therefor. The county treasurer shall settle for the moneys received as for other state and county moneys. Upon the payment of the money specified in said certificate, and the giving of the receipts aforesaid by the treasurer, controller, and auditor, any deed or certificate of sale that may have been made to the state shall become null and void, and all right, title, and interest acquired by the state, under and by virtue of the tax sale, shall cease and determine. Upon consummation of the redemption, the auditor shall report same to the recorder, whereupon the recorder shall, without payment of fee, note on the margin of the certificate of sale, or deed, if issued, the fact of such redemption, date, and by whom redeemed. The receipts of the county treasurer, controller, and county auditor may be recorded in the recorder's office of the county in which said real estate is situated, in the book of deeds, and the record thereof shall have the same effect as that of a deed of reconveyance of the interest

conveyed by such deed or certificate of sale. This act shall apply to state lands sold by the state when the full amount of the purchase price of one dollar and twenty-five cents per acre has not been paid to the state therefor, except when the deed to the state, provided for in section three thousand seven hundred and eighty-five, has been filed with the surveyor-general. En. Stats. 1883, 23. Am'd. 1895, 22; 1895, 329; 1897, 433; 1901, 651.

Cal.Rep.Cit. 106, 130; 106, 132; 106, 136; 116, 521; 116, 522; 116, 523; 136, 420; 137, 104; 137, 321; 137, 324.

§ 3818. **Partial redemption.** A partial redemption may be made separately from the whole assessment, of any lot, piece, or parcel of land contained in any assessment, if such lot, piece, or parcel has a separate valuation on the assessment roll, in the manner following: In the estimate provided for in the preceding section, the auditor shall estimate the amount of state and county taxes due on such lot, piece, or parcel of land, together with a proper proportion of the taxes due on personal property under such assessment, and of the taxes due each school, road, or lesser taxation district; and such redemption shall be made in the manner provided for in the preceding section. The recorder shall note, on the margin of the record of the certificate of sale, a description of the property thus redeemed, and shall specifically set forth the several amounts of taxes paid upon such redemption. En. Stats. 1889, 338. Am'd. 1895, 331. Rep. 1895, 23. En. 1897, 434.

§ 3819. **Payment under protest.** At any time after the assessment book has been received by the tax collector, and the taxes have become payable, the owner of any property assessed therein, who may claim that the assessment is void in whole or in part, may pay the same to the tax collector under protest, which protest shall be in writing, and shall specify whether the whole assessment is claimed to be void, or if a part only, what portion, and in either case the grounds upon which such claim is founded and when so paid under protest, the payment shall in no case be regarded as voluntary payment, and such owner may at any time within six months after such payment bring an action against the county, in the superior court, to recover back the tax so paid under protest; and

if it shall be adjudged that the assessment, or the part thereof referred to in the protest, was void on the ground specified in the protest, judgment shall be entered against such county therefor; provided, that no assessment shall be declared void on account of deductions being made for mortgages where part payments have been made and not released upon the record. On the payment of any such judgment, such part of the tax recovered thereby as may have been paid by the county treasurer into the state treasury, shall be regarded as an amount due the county from the state, and shall be deducted in the next settlement had by the county with the controller; such deductions to be made in the manner that other deductions are made, as provided in section three thousand eight hundred and seventy-one of this code. En. Stats. 1893, 32. Am'd. 1895, 331.

Cal.Rep.Cit. 106, 421; 112, 318; 113, 394; 113, 401; 115, 68; 120, 4; 124, 342; 131, 363; 137, 467; 137, 469; 137, 517.

CHAPTER VIII.

COLLECTION OF TAXES BY THE ASSESSOR ON CERTAIN PERSONAL PROPERTY.

§ 3820. Assessor when to collect taxes.
§ 3821. Seizure and sale.
§ 3822. Mode of conducting such seizure and sale.
§ 3823. Rate of previous year governs amount.
§ 3824. Return of excess where lower rate fixed.
§ 3825. Collection of deficiency where higher rate is fixed.
§ 3826. Monthly settlement of assessor with auditor.
§ 3827. Auditor to note the amount of taxes paid by each person.
§ 3828. Auditor to note excesses or deficiencies in taxes paid.
§ 3829. Compensation to assessor for collection.
§ 3830. Present incumbents to discharge duties of assessor. (Repealed.)
§ 3831. Liability of assessors.

§ 3820. Assessor when to collect taxes. The assessor must collect the taxes on all property when, in his opinion, said taxes are not a lien upon real property sufficient to secure the payment of the taxes. The taxes on all assessments of possession of, claim to, or right to the possession of land, shall be immediately due and payable upon assessment, and shall be collected by the assessor as provided in this chapter. En. March 12, 1872. Am'd. 1873-4, 152; 1895, 331; 1897, 435.

Cal.Rep.Cit. 65, 359; 68, 55; 71, 207; 71, 208; 119, 525; 123, 73; 123, 155; 128, 609; 128, 611; 137, 520.

§ 3821. Seizure and sale. In the case provided for in the preceding section, at the time of making the assessment, or at any time before the third Monday of July, the assessor may collect the taxes by seizure and sale of any personal property owned by the person against whom the tax is assessed. En. March 12, 1872. Am'd. 1897, 435.

Cal.Rep.Cit. 123, 73; 123, 155; 137, 520.

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§ 3822. Mode of conducting such seizure and sale. The provisions of sections 3791, 3792, 3793, 3794, 3795, and 3796 apply to such seizure and sale. En. March 12, 1872.

Cal.Rep.Cit. 123, 155.

§ 3823. Rate of previous year governs amount. The assessor shall be governed as to the amount of taxes to be collected by him, upon personal property, by the state and county rate, the special school district, road district, and other local district rates for the locality in which such personal property is taxable, for the previous year. En. March 12, 1872. Am'd. 1873-4, 152; 1895, 332; 1901, 653.

Cal.Rep.Cit. 123, 155.

§ 3824. Return of excess where lower rate fixed. When the rate is fixed for the year in which such collection is made, then, if a sum in excess of the rate has been collected, such excess shall not be apportioned to the state, but the whole thereof shall remain in the county treasury, and must be repaid by the county treasurer to the person from whom the collection was made, or to his assignee, on demand therefor. En. March 12, 1872. Am'd. 1885, 57.

Cal.Rep.Cit. 119, 525; 123, 155.

§ 3825. Collection of deficiency where higher rate is fixed. If a sum less than the tax at the rate fixed upon the valuation thereof after equalization, has been collected, the deficiency must be collected by the tax collector either by a sale of the property on which the same is a lien, if any, in the same manner as other taxes on real and personal property are collected, or by seizure and sale of any personal property owned by the person against whom the tax is assessed, in the same manner provided in sections thirty-eight hundred and twenty-one and thirty-eight hundred and twenty-two for the seizure and sale by the assessor; provided, that no action shall be maintained to collect such deficiency unless the tax collector

shall, at least fifteen days before the commencement of such action, deposit in the United States postoffice, addressed to the person owing such tax, at his last known place of residence, a notice in writing, informing him of the amount and nature of such tax, and that unless the same is paid within fifteen days action will be brought for the same; and any action commenced without such notice shall be dismissed. En. March 12, 1872. Am'd. 1897, 435; 1901, 653.

Cal.Rep.Cit. 123, 155.

§ 3826. **Monthly settlement of assessor with auditor.** The assessor, on the first Monday in each month, must make a settlement with the auditor, and must pay into the county treasury all moneys collected by him for such taxes during the preceding month. En. March 12, 1872. Am'd. 1895, 332.

Cal.Rep.Cit. 123, 155.

§ 3827. **Auditor to note the amount of taxes paid by each person.** The auditor must, as soon as the "assessment book" for the year comes into his hands, note opposite the names of each person from whom taxes have been collected the amount thereof. En. March 12, 1872.

Cal.Rep.Cit. 123, 155.

§ 3828. **Auditor to note excesses or deficiencies in taxes paid.** As soon as the rate of taxation for the year is fixed, the auditor must note, in connection with the entry made under the provisions of the preceding section, the amount of the excess or deficiency. En. March 12, 1872.

Cal.Rep.Cit. 123, 155.

§ 3829. **Compensation to assessor for collection.** For services rendered in the collection of taxes under section three thousand eight hundred and twenty, the assessors of the several counties, or cities and counties, shall receive such compensation as the act governing salaries of county officers may provide. En. March 12, 1872. Am'd. 1873-4, 153; 1877-8, 65; 1895, 332.

Cal.Rep.Cit. 123, 155.

§ 3830. **Present incumbents to discharge duties of assessor.** (Repealed.) En. March 12, 1872. Rep. 1895, 332.

Cal.Rep.Cit. 112, 315; 123, 155.

§ 3831. **Liability of assessors.** Within fifteen days after the first Monday in August of each year, the auditor of

the county, or city and county, must make a careful examination of the assessment book or books of the county, or city and county, and ascertain therefrom the amount or amounts of all taxes that should have been collected by the assessor in pursuance of this chapter, and which have not been collected. He must then state an account to the assessor, and demand from him that the amount, or amounts, so remaining uncollected shall be paid into the county treasury within fifteen days from the date of said demand. If at the expiration of said time, the assessor has not settled for and paid said amount, or amounts, into the treasury as aforesaid, the district attorney must commence an action in the proper court against the assessor and his bondsmen, for the recovery of said amount or amounts so remaining uncollected; and upon the trial of such action no defense shall be admissible, except that the assessment or assessments are illegal, invalid, or void. En. Stats. 1895, 332.

CHAPTER IX.

POLL TAXES.

§ 3839. Persons liable to poll tax.
§ 3840. When to be collected.
§ 3841. Blank poll tax receipts to be printed by county treasurer.
§ 3842. Style of blank to be changed each year.
§ 3843. County treasurer's duties in relation to blanks.
§ 3844. Auditor to sign blank receipts, and make entries.
§ 3845. Blanks to be delivered to and charged assessor.
§ 3846. Poll tax may be collected by seizure and sale of personal property.
§ 3847. Mode of conducting such seizure and sale.
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§ 3855. Auditor to return receipts not used to treasurer
§ 3856. Treasurer, duty in relation to receipts.
§ 3857. Assessor to keep roll of persons liable and of payments and delinquents.
§ 3858. Duties of auditor when roll returned to him.
§ 3859. Correction of poll tax roll.
§ 3860. Unpaid poll tax a lien.
§ 3861. Proceeds paid to county treasurer for state school fund.
§ 3862. Compensation for collecting tax.

§ 3839. Persons liable to poll tax. Every male inhabitant of this state, over twenty-one and under sixty years

of age, except paupers, insane persons, and Indians not taxed, must annually pay a poll tax of two dollars; provided, the same be paid between the first Monday in March and the first Monday in July; but if not paid prior to the first Monday in July, then it shall be three dollars; provided, further, that nothing herein shall affect any laws imposing a greater poll tax upon inhabitants ineligible to citizenship. En. March 12, 1872. Am'd. 1873-4, 161; 1880, 17.

Cal.Rep.Cit. 104, 64.

Section conforms to Const. Cal., art. XIII, sec. 12.

Exemption of firemen in certain counties: See post, Appendix, title Fire Department.

§ 3840. When to be collected. Poll tax must be collected by the assessors between the first Monday in March and the last Monday in December of the same year. En. March 12, 1872. Am'd. 1873-4, 161; 1895, 332.

Cal.Rep.Cit. 123, 74.

§ 3841. Blank poll tax receipts to be printed by county treasurer. The county treasurer must, before the first Monday in March and the first Monday in July of each year, cause to be printed, respectively, two and three-dollar blank poll tax receipts, in book form, with stubs numbered the same as the receipts, of one hundred in each book, a sufficient number for the use of the assessor. The stubs shall have a line for the name of the poll tax payer, his age, residence, occupation, by whom employed, and the name of the deputy collecting the tax. En. March 12, 1872. Am'd. 1873-4, 161; 1895, 332.

§ 3842. Style of blank to be changed each year. The style of such blanks must be changed every year. En. March 12, 1872.

§ 3843. County treasurer's duties in relation to blanks. The treasurer must, before the third Monday in February of each year:

First—Number and sign the two-dollar blanks, and before the first Monday in July, number and sign the three-dollar blanks.

Second—At the time of signing make an entry of the whole number thereof, and of the first and last number placed thereon, in a book kept for that purpose.

Third—Deliver all such blanks to the auditor, and charge him therewith. En. March 12, 1872. Am'd. 1873-4, 161; 1897, 435.

§ 3844. Auditor to sign blank receipts, and make entries. The auditor upon the receipt thereof must sign the same, and make in a book to be kept by him for that purpose a similar entry to that prescribed in subdivision 2 of the preceding section. En. March 12, 1872.

§ 3845. Blanks to be delivered to and charged assessor. He must, at any time after the third Monday in February, and the first Monday in July, upon demand, deliver to the assessor, in their order, the two and three-dollar blanks and charge him therewith. En. March 12, 1872. Am'd. 1873-4, 162; 1897, 435.

Cal.Rep.Cit. 46, 98.

§ 3846. Poll tax may be collected by seizure and sale of personal property. The assessor must demand payment [of] poll tax of every person liable therefor, and on the neglect or refusal of such person to pay the same, he must collect by seizure and sale of any personal property owned by such person. En. March 12, 1872. Am'd. 1873-4, 162.

Cal.Rep.Cit. 123, 74.

§ 3847. Mode of conducting such seizure and sale. The sale may be made after three hours' verbal notice of time and place, and the provisions of sections thirty-seven hundred and ninety-one, thirty-seven hundred and ninety-three, thirty-seven hundred and ninety-four, thirty-seven hundred and ninety-five, and thirty-seven hundred and ninety-six, apply to such seizure and sale. En. March 12, 1872. Am'd. 1873-4, 162.

§ 3848. Debtors of persons owing poll tax to pay poll tax. Every person indebted to one who neglects or refuses, after demand, to pay a poll tax, becomes liable therefor, and must pay the same for such other person after service upon him by the collector of a notice in writing, stating the name of such person. En. March 12, 1872.

§ 3849. What officers are debtors under preceding section. Every officer authorized to draw the warrants for

or to pay the salary or fees of any officer is the debtor of such officer within the meaning of the preceding section. En. March 12, 1872.

§ 3850. Debtor may charge creditor for poll tax paid. Every person paying the poll tax of another may deduct the same from any indebtedness to such other person. En. March 12, 1872.

§ 3851. Receipt, delivery to purchaser or to person paying tax. The assessor must deliver the poll tax receipt, filled out with the name of the person owing the taxes, to the purchaser of property at any such sale; in other cases he must deliver it, filled out in like manner, to the person paying the tax. En. March 12, 1872.

§ 3852. Receipt only evidence of payment. The receipt so delivered is the only evidence of payment. En. March 12, 1872.

§ 3853. Monthly settlements and payments of assessor. On the first Monday in each month the assessor must make oath, before the auditor, of the total amount of poll taxes collected by him during the last preceding month, and must, at the same time, settle with the auditor for the same, and pay into the county treasurer's office the total amount of poll taxes colected, less the per centum allowed for fees. En. March 12, 1872.

§ 3854. Assessor's yearly final settlement. On the first Monday in July, the assessor must return to the auditor all two-dollar blank poll tax receipts received by him and not used, and pay to the treasurer the total amount collected and not before paid in, less the amount of his fees, and the auditor must deliver to him the three-dollar receipts; and on the last Monday in December of each year, he must return to the auditor all three-dollar poll tax receipts received by him and not used, and must make final settlement with the auditor and treasurer therefor. En. March 12, 1872. Am'd. 1873-4, 163; 1895, 333.

§ 3855. Auditor to return receipts not used to treasurer. The auditor must, as soon as the settlement is made, return to the treasurer the receipts not used. En. March 12, 1872.

§ 3856. Treasurer, duty in relation to receipts. The treasurer must credit the auditor with the receipts so returned, and must thereupon seal them up securely and deposit and keep them in his office. En. March 12, 1872.

§ 3857. Assessor to keep roll of persons liable and of payments and delinquents. The assessor must keep a roll of the names and local residence, or place of business, of all persons subject to or liable for poll tax, and, if paid, date and amount of each payment, and, if not paid, cause of non-payment; provided, that no person shall be returned as delinquent on such roll unless a demand has been made upon him in person or through the postoffice. En. March 12, 1872. Am'd. 1873-4, 163; 1877-8, 69.

§ 3858. Duties of auditor when roll returned to him. On the first Monday in January of each year, the assessor must deliver to the auditor the roll so made up, and the auditor must add to the total poll tax delinquent on such roll thirty-three and one third per centum additional, and without delay deliver such list to the tax collector, and charge the collector therewith. En. March 12, 1872. Am'd. 1873-4, 163; 1877-8, 70; 1895, 333; 1897, 436.

Cal.Rep.Cit. 123, 74.

§ 3859. Correction of poll tax roll. Whenever the name of a person not liable for poll tax is erroneously entered upon said poll tax roll, or whenever the assessor has failed to note the payment of a poll tax lawfully assessed, if paid, the board of supervisors may, upon proof thereof, order the necessary correction to be made on the poll tax roll and the assessment roll whereon the same may appear. En. March 12, 1872. Rep. 1873-4, 164. En. Stats. 1901, 653.

§ 3860. Unpaid poll tax a lien. If any person, assessed for a property tax, has not paid to the assessor the poll tax due from him, or for which he is liable, it, with thirty-three and one third per cent in addition thereto, constitutes a lien upon the property assessed to such person, to attach from the first Monday in March in each year, and must be collected in the same manner and at the same time as delinquent taxes are collected. En. March 12, 1872. Am'd. 1873-4, 164.

§ 3861. Proceeds paid to county treasurer for state school fund. The proceeds of the poll tax must be paid

to the county treasurer, as provided by law, for the exclusive use of the state school fund, and shall, by such treasurer, be paid to the state as other moneys belonging to the state. En. March 12, 1872. Am'd. 1880, 17.

Cal.Rep.Cit. 131, 859.

§ 3862. **Compensation for collecting tax.** The assessor, for services rendered in the collection of poll taxes, shall receive the sum of fifteen per cent; and the collector, for services rendered in the collection of poll taxes on the delinquent list (including the publication), shall receive the sum of twenty-five per cent on all delinquent poll tax collected by him. En. March 12, 1872. Am'd. 1873-4, 164; 1877-8, 70.

Cal.Rep.Cit. 104, 64; 185, 514.

CHAPTER X.

SETTLEMENTS WITH THE CONTROLLER AND PAYMENTS INTO THE STATE TREASURY.

§ 3865. County treasurers, settlements and payments by.
§ 3866. Semi-annual settlements of county treasurers.
§ 3867. Treasurer neglecting to settle, penalty.
§ 3868. Semi-annual reports of county auditors.
§ 3869. Auditor to send report to whom.
§ 3870. Failure of auditor to make report, penalty.
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§ 3873. Controller's statement to contain what.
§ 3874. County treasurer to file copy with auditor.
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§ 3877. Controller may examine books of any revenue officer.
§ 3878. Prosecution of officers defrauding state.
§ 3879. Controller may designate county in which proceedings had.
§ 3880. Special counsel may be employed; expenses.

§ 3865. **County treasurers, settlements and payments by.** The treasurers of the respective counties must at any time, upon the order of the controller and treasurer of state, settle with the controller, and pay over to the treasurer all moneys in their possession belonging to the state. En. March 12, 1872.

Cal.Rep.Cit. 99, 78.

§ 3866. **Semi-annual settlements of county treasurers.** The treasurers of all the counties or cities and counties of this state must, between the fifteenth and thirtieth days of December and May of each year, proceed to the state capitol and settle in full with the controller of state, and

pay over in cash to the treasurer of state, all funds belonging to the state which have come into their hands, as county treasurers, before the close of business on and including the first Monday of said months, except principal and interest received on account of state school lands, which shall only be settled for up to and including the last day of the month prior to the month of settlement; provided, that the controller of state shall, on or before the fifteenth day of the month in which settlement is to be made, notify the treasurer of each county the amount of state school money which will be due the state from his county in the then pending settlement; the county treasurer shall thereupon and thereby be authorized to retain in the treasury of his county the said amount of state school money, and shall, at the time of paying over, in cash, to the treasurer of state, all other funds belonging to the state which have come into his hands as county treasurer, as aforesaid, file with the treasurer of state his certificate, stating the amount so retained; and the said certificate shall, for all purposes, be deemed and counted as cash in the state treasury to the amount therein stated, and shall be so accepted by each county treasurer on the payment of the apportionment of school moneys due his county. On the making of the apportionment of school moneys due to the respective counties and cities and counties, if there shall be a balance due the county, the treasurer of state shall immediately pay the same, and if there shall be a balance due the state the county treasurer shall immediately pay the same into the state treasury. If, in the opinion of the controller of state, it appears from the report of the county auditor that sufficient property tax has not been collected to make it for the interest of the state that a settlement should be made, the controller shall defer the settlement until the next regular settlement. No mileage, fees, or commissions shall be allowed any officer for any deferred settlement; provided, that in case any settlement is so deferred, the county auditor, in his next report to the controller of state, shall include therein all moneys required to be reported since the date of his last report upon which a settlement was made. En. March 12, 1872. Am'd. 1873-4, 165; 1875-6, 64; 1877-8, 66; 1891, 450; 1893, 56.

Cal.Rep.Cit. 99, 78.

§ 3867. Treasurer neglecting to settle, penalty. Every county treasurer who neglects or refuses to appear at the office of the controller and treasurer at the times specified in this chapter, and then and there to settle and make payment as required by this chapter, shall forfeit to the state of California one thousand dollars, to be recovered in an action brought by the attorney-general in the name of the controller. En. March 12, 1872. Am'd. 1895, 333.

Cal.Rep.Cit. 76, 279.

§ 3868. Semi-annual reports of county auditors. The auditor of each county, between the first and tenth day of each month in which the treasurer of his county is required to settle with the controller, must make, in duplicate, and verify by his affidavit, a report to the controller of state, in such form as the controller may desire, showing specifically the amount due the state from each particular source of revenue at the close of business on and including the first Monday of the month in which settlement is required, except principal and interest received on account of state school lands, which shall be reported up to the end of the previous month. En. March 12, 1872. Am'd. 1877-8, 66; 1893, 55.

§ 3869. Auditor to send report to whom. The auditor must at once transmit by mail or express to the controller one copy of the report, and must deliver the other copy to the treasurer of his county. En. March 12, 1872.

§ 3870. Failure of auditor to make report, penalty. Every auditor who fails or refuses to make and transmit the report required by this chapter, or any report or statement required by this title, forfeits to the state of California one thousand dollars, to be recovered in an action brought by the attorney-general in the name of the controller. En. March 12, 1872. Am'd. 1895, 333.

Cal.Rep.Cit. 76, 279.

§ 3871. Deductions by controller on settlement. In the settlement, the controller must deduct the mileage allowed to the county treasurer in making settlement, the state's portion of the repayments made under section three thousand eight hundred and twenty-four, the state's portion of all amounts refunded under section three thousand eight

hundred and four, and any other amounts due the county, or city and county. En. March 12, 1872. Am'd. 1895, 333.

§ 3872. Manner of making payments into state treasury. The manner of making payments into the state treasury is prescribed by sections 433, 434, 452, and 453 of this code. En. March 12, 1872.

Cal.Rep.Cit. 87, 290.

§ 3873. Controller's statement to contain what. The controller must, after the treasurer has made settlement and payment, enter upon each copy of the auditor's report a statement showing:

1. The amount of money by the county treasurer paid into the state treasury.

2. The amounts authorized to be deducted under section three thousand eight hundred and seventy-one.

And must then return one copy of the report to the county treasurer. En. March 12, 1872. Am'd. 1895, 333.

§ 3874. County treasurer to file copy with auditor. The county treasurer must file with the auditor of his county the copy returned to him by the controller. En. March 12, 1872.

§ 3875. Auditor to make certain entries. The auditor must then make the proper entries in his account with the treasurer. En. March 12, 1872.

§ 3876. Rate of mileage allowed treasurer. The controller must, in the settlement, allow the treasurer for mileage at the rate of forty cents per mile from the county seat to the capital, such mileage not to exceed at any settlement one hundred dollars. En. March 12, 1872.

Cal.Rep.Cit. 182, 267.

§ 3877. Controller may examine books of any revenue officer. The controller may examine the books of any officer charged with the collection and receipt of state taxes. En. March 12, 1872.

§ 3878. Prosecution of officers defrauding state. If he believes any officer has been guilty of defrauding the state of revenue, or has neglected or refused to perform any duty relating to the revenue, he must direct the attorney-

general, or other counsel, to prosecute the delinquent. En. March 12, 1872. Am'd. 1895, 334.

§ 3879. Controller may designate county in which proceedings had. When any law in relation to the revenue of the state has been so far violated as to require the prosecution of the offender for a criminal offense, or proceedings against him by civil action, the controller may designate the county in which the prosecution or proceeding may be had. En. March 12, 1872.

§ 3880. Special counsel may be employed; expenses. The controller or attorney-general may employ other counsel than the district attorney, and the expenses must be audited by the board of examiners and be paid out of the state treasury. En. March 12, 1872.

CHAPTER XI.

MISCELLANEOUS PROVISIONS.

§ 3881. Clerical errors in assessment books; correction.
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§ 3897. Sale of property purchased by state.
§ 3898. Moneys received how distributed. Deed.
§ 3898a. Transfer to university of lands acquired by tax sales.
§ 3899. Action for taxes over three hundred dollars.
§ 3900. Officials may designate where action commenced.

§ 3881. Clerical errors in assessment books; correction. Clerical omissions or errors or defects in description or defects in form in any assessment book when it can be ascertained from the assessment book, or from the assessor's map or block books, or from the list furnished

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by the property owner what was intended to be assessed, or what should have been assessed, may, with the written consent of the district attorney, be supplied or corrected by the assessor at any time prior to sale for delinquent taxes, after the assessment was made; provided further, that where said change will decrease the amount of tax charged against the taxpayer by reason of said assessment, the consent of the board of supervisors shall also be necessary to said change; provided further, that the date and nature of said correction shall be entered opposite said assessment and the written authorization therefor shall be preserved by the said assessor as a public record; provided further, that where said change will increase the amount of tax on any assessment, the person so charged shall be notified at least five days before said change, and if said person is dissatisfied with said change he may present his objections to the board of supervisors, and their decision in the matter shall be conclusive. In the city and county of San Francisco the written consent of the city and county attorney shall have the same force and effect as the written consent of the district attorney. En. March 12, 1872. Am'd. 1875-6, 59; 1895, 334; 1901, 653.

Cal.Rep.Cit. 91, 439; 137, 701.

Assessment book, original: Ante, sec. 3650. Duplicate: Ante, sec. 3732.

§ 3882. Omissions, etc., in delinquent lists, how corrected. When the omission, error, or defect has been carried into a delinquent list or any publication, the list or publication may be republished as amended, or notice of the correction may be given in a supplementary publication. En. March 12, 1872.

Cal.Rep.Cit. 58, 394.

§ 3883. Publication of corrected delinquent lists. The publication must be made in the same manner as the original publication, and for not less than one week. En. March 12, 1872.

Cal.Rep.Cit. 58, 394.

§ 3884. Initial letters, abbreviations, and figures may be used. In the assessment of land, advertisement and sale thereof for taxes, initial letters, abbreviations, and the figures may be used to designate the township, range, section or part thereof, and such other abbreviations as may

be approved by the state board of equalization; provided, a written or printed explanation of such abbreviations shall appear on each page of the assessment roll or book. En. March 12, 1872. Am'd. 1901, 654.

§ 3885. No assessment illegal for informality or delay. No assessment or act relating to assessment or collection of taxes is illegal on account of informality, nor because the same was not completed within the time required by law. En. March 12, 1872.

Cal.Rep.Cit. 46, 530; 83, 400; 93, 469; 116, 353; 116, 355; 181, 614; 137, 250; 137, 701; 137, 702.

§ 3886. Fines, forfeitures, and penalties paid into county treasurer. (Repealed.) En. March 12, 1872. Rep. 1895. 334.

Cal.Rep.Cit. 76, 278.

§ 3887. Who liable for taxes on mortgaged or pledged personal or real estate property. (Repealed.) En. March 12, 1872. Rep. 1880, 17.

Cal.Rep.Cit. 67, 110.

§ 3888. Taxes payable in lawful money of United States. Taxes must be paid in the lawful money of the United States. A tax levied for a special purpose may be paid in such funds as may be directed. En. March 12, 1872. Am'd. 1895, 334.

Legal tender notes to be received at par for taxes: Stats. 1880, p. 8.

§ 3889. Annual settlements of assessors, district attorneys and treasurers. Every assessor, district attorney and county treasurer must annually, on the first Monday of January, make a settlement with the county auditor of all transactions connected with the revenue for the previous year. En. March 12, 1872.

§ 3890. Officers to perform only duties of their own offices. The treasurer, tax collector, assessor, clerk of the board of supervisors and each member of the board must separately perform the duties required of him in his office, and must not, except in the cases provided by law, perform the duties required of any other officer under this title. En. March 12, 1872.

§ 3891. When this title takes effect. With relation to the acts passed at the present session of the legislature,

the provisions of this title must, after this title takes effect, be construed as though this code had been passed and approved on the last day of the present session. But the provisions of this section do not apply to any act expressly amendatory of either of the codes, or putting into effect any part of either; nor to an act approved March sixteenth, eighteen hundred and seventy-two, entitled An act to put into immediate effect certain parts of the Political and Penal Codes; nor to an act approved March twenty-second, eighteen hundred and seventy-two, entitled An act to put into effect certain parts of the codes and provide for their publication. En. March 12, 1872.

Cal.Rep.Cit. 46, 98.

§ 3892. Saving clause. All taxes assessed before this code takes effect must be collected under the laws in force at the time the assessment was made, and in the same manner as if this code had not been passed. En. March 12, 1872.

§ 3893. Compensation of assessor and auditor for extra services. (Repealed.) En. March 12, 1872. Rep. 1895, 334.

§ 3894. Deputies for assessors. (Repealed.) En. March 12, 1872. Rep. 1895, 334.

Cal.Rep.Cit. 102, 447.

§ 3895. Compensation of deputies. (Repealed.) En. March 12, 1872. Rep. 1895, 334.

Cal.Rep.Cit. 102, 447.

§ 3896. State board may dispense with duplicate assessment book. (Repealed.) En. March 12, 1872. Rep. 1895, 334.

§ 3897. Sale of property purchased by state. Whenever the state shall become the owner of any property sold for taxes, and the deed to the state has been filed with the controller, as provided in section three thousand seven hundred and eighty-five, the controller may thereupon, by a written authorization, direct the tax collector of the county, or city and county, to sell the property, or any part thereof as in his judgment he shall deem advisable, in the manner following: He must give notice of such sale by first publishing a notice for at least three successive 1905 31

weeks in some newspaper published in the county, or city and county, or, if there be no newspaper published therein, then by posting a notice in three conspicuous places in the county, or city and county, for the same period. Such notices must state specifically the place of, and the day and hour of sale, and shall contain a description of the property to be sold, and shall also embody a copy of the authorization received from the controller. At the time set for such sale, the tax collector must sell the property described in the controller's authorization and said notices at public auction to the highest bidder for cash, in lawful money of the United States; but no bid shall be received or accepted at such sale for less than the amount of all the taxes levied upon such property, and all interests, costs, penalties and expenses up to the date of such sale. The expense of the publication of the notice herein required shall be a charge against the county. En. Stats. 1873-4, 153. Am'd. 1895, 334; 1897, 436.

Cal.Rep.Cit. 137, 465; 137, 466.

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§ 3898. Moneys received, how distributed. Deed. The moneys received from such sale shall be distributed as follows: The tax collector shall deduct the penalties, costs and other amounts received as expenses attending such sale, and the balance shall be distributed between the state and county, or city and county, in the proportion that the state rate bears to the county, or city and county rate of taxation; said tax collector shall pay all amounts into the county treasury, and the treasurer shall account to the state for its portion in the settlement required by section three thousand eight hundred and sixty-five and section three thousand eight hundred and sixty-six. On receiving the amount bid, as prescribed in the preceding section, the tax collector must execute a deed to the purchaser, reciting the facts necessary to authorize such sale and conveyance, which deed shall convey all the interest of the state in and to such property, and shall be prima facie evidence of all facts recited therein. En. Stats. 1873-4, 154. Am'd. 1895, 335.

Cal.Rep.Cit. 73, 613.

§ 3898a. Transfer to university of lands acquired by tax sales. Whenever the state has or shall become the owner of any property sold for taxes and the deed to the state has

been filed with the controller, upon which property there appears of record a mortgage to the regents of the University of California, and such mortgage and the debt secured thereby have not been both paid in full and satisfied of record, the controller, upon receiving proof, by affidavit of the president and secretary, or acting secretary or of the treasurer of said regents, that the debt secured by said mortgage has not been fully paid, shall direct the tax collector of the county, or city and county, in which such lands are situated, to execute a deed of such lands in the name of the state of California to the regents of the University of California. Said tax collector shall thereupon publish a notice once a week for at least three successive weeks in some newspaper published in the county or city and county in which such lands are situated, or if there be no newspaper published therein, then said tax collector shall post a notice in three conspicuous places in said county, or city and county, at least three weeks before the day to be named in said notice as hereinafter provided. Said notice must state that on or after a day therein mentioned (which day shall be not less than four weeks, and not more than eight weeks after the first publication or posting of said notice), said tax collector will execute and deliver to the regents of the University of California a deed to the property, and shall describe said property and shall state that said deed will be made because of a sale of said property to the state for delinquent taxes, and because the regents of the University of California is interested in the said property. No other matters need be contained in said notice. One or more pieces of land may be described in the affidavit, notice, deed and report herein provided for. Unless prior to the day so to be mentioned in such notice, there shall be paid to the said tax collector the full amount for which said property was sold to the state, together with all interest and penalties thereon and all expenses and costs connected therewith, and all subsequent state and county taxes not theretofore paid in full, and all interest and penalties thereon and all costs and expenses connected therewith, and also the expense of publishing or posting said notice, as the case may be, then said tax collector shall on said day, or within ten days thereafter, execute, acknowledge and deliver

such deed to said regents without any payment, charge or fee therefor, and shall within five days thereafter report in writing to the controller the fact of the execution of such deed. In the event said notice shall describe two or more pieces of land assessed separately and sold separately to the state, then if all the payments above provided for be made within the time aforesaid in respect to any one of said pieces so separately assessed and sold, (including the entire cost of publishing or posting said notice, as the case may be), such piece so paid upon shall not be included in the deed herein provided for, and the fact of such payment and amount paid shall be stated in the said report to the controller. Such deed shall transfer, grant, convey and confirm to the regents of the University of California the entire title to such lands, free and clear of all claims and incumbrances whatsoever; but nothing herein contained shall be held to interfere with the right of said regents to enforce said mortgage or the payment of the debt secured thereby, or to procure a decree of foreclosure and a sale under such decree of all or any of the property described in such mortgage. Said deed shall recite the facts in this section provided as authorizing its execution and shall be prima facie evidence thereof and of all matters therein recited and of the ownership of said lands by said regents. Said deed may be recorded in the office of the county recorder of the county or city and county in which any such lands are situated; and upon the expiration of two years after it has been so recorded, shall, (except as against parties deriving title through a sale and purchase under decree of foreclosure of such mortgage), be conclusive evidence that the complete fee simple title to the property therein described vested at the date of said deed in the regents of the University of California, free and clear of all claims, liens, charges, and incumbrances whatsoever; provided, however, that in any action which may be commenced against said regents before the expiration of said two years to question the title of said regents to said property, said deed shall be prima facie evidence only. The expense of the publication and posting herein provided for shall be paid by the regents of the University of California, unless such expense should be paid to said tax collector prior to the day mentioned in said notice, as hereinabove

permitted. While any mortgage to said regents appears of record and not satisfied of record, no sale of any lands therein described shall be made under the provisions of section 3897 of this code. Any moneys which may be paid under the provisions of this section shall be distributed as provided in section 3898 of this code. En. Stats. 1903, 154.

§ 3899. Action for taxes over three hundred dollars. The controller may, at any time after a delinquent list has been delivered to a tax collector, direct such tax collector not to proceed in the sale of any property on said list whereon the taxes shall amount to three hundred dollars or more. Upon such direction, the tax collector must make out, and deliver to the controller, a certified copy of the entries upon the delinquent list relative to such tax. The controller shall thereupon direct the attorney-general to bring suit against the delinquent, in the proper court, in the name of the people of the state of California, to enforce such collection. The provisions of the Code of Civil Procedure relating to pleadings, proofs, trials and appeals, are hereby made applicable to the proceedings herein provided for. The moneys received in pursuance of this section shall be distributed as provided in the preceding section. En. Stats. 1873-4, 154. Am'd. 1895, 23; 1895, 335.

Cal.Rep.Cit. 73, 613; 83, 412; 99, 599; 99, 600; 99, 601; 137, 464.

This section was also amended at the same session (p. 23) as follows:

The controller may, at any time after a delinquent list has been delivered to a collector, direct such collector not to proceed in the collection of any tax on said list amounting to three hundred dollars, further than to offer for sale but once to the state any property upon which such tax is a lien. Upon such direction, the collector, after offering the property for sale once, if the taxes which are a lien upon such property are not then and there paid by the owner or person in interest, the collector must make out and deliver to the controller a certified copy of the entries upon the delinquent list relative to such tax, and the tax collector, or the controller, in case the tax collector refuses or neglects for

fifteen days after being directed to bring suit for collection by the controller, may proceed by civil action in the proper court, and in the name of the people of the state of California, to collect such tax and cost.

§ 3900. Officials may designate where action commenced. Whenever, in this title, any official, or officials, are authorized to commence an action for the violation of any law relating to revenue, or to compel the specific performance thereof, such official, or officials, may designate the county, or city and county, in which such action shall be commenced and prosecuted. En. Stats. 1873-4, 155. Am'd. 1895, 335.

Cal.Rep.Cit. 73, 613; 83, 412; 108, 300.

The one hundred and twelfth and one hundred and thirteenth section of the act of 1895, amending the tax law are as follows:

Sec. 112. All acts and parts of acts in conflict with this act are hereby repealed; provided, nothing in this act contained shall affect the time or manner of collecting delinquent assessments levied and assessed to pay the damages, costs and expenses for or incident to the laying out, opening, extending, widening, straightening, diverging, curving, contracting or closing up, in whole or in part, any street, square, lane, alley, court or place within municipalities in this state, nor the time or manner of sales, or redemption after sales, of real property sold to pay the damages, costs and expenses incident to such work or improvement aforesaid; and the time and manner of sale or redemption after sale of any real property sold to pay the damage, cost and expense for or incident to laying out, opening, extending, widening, straightening, diverging, curving, contracting or closing up, in whole or in part, any street, square, lane, alley, court or place within municipalities in this state shall be had and made in the same time and manner, as provided by law in such matters, on the first day of January, Anno Domini eighteen hundred and ninety-five.

Sec. 113. This act shall take effect and be in force from and after its passage.

Attachment: See Code Civ. Proc., secs. 537-559.

Crimes against the revenue and property of this state: Pen. Code, secs. 424-443.

PART IV.

OF THE GOVERNMENT OF COUNTIES, CITIES AND TOWNS.

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Title I. Of Counties, §§ 3901-3985.
II. The Government of Counties, §§ 4000-4347.
III. The Government of Cities, §§ 4354-4449.
IV. Liability of Counties and Cities for Injuries to Property by Mobs or Riots, §§ 4452-4457.
V. Publications by State Officers and Commissioners, or the Officers of Counties, Cities, Cities and Counties, or Towns, §§ 4458, 4459.

TITLE I.

OF COUNTIES.

Chapter I. County Boundaries and County Seats, §§ 3901-3958.
II. General Provisions Relating to Counties, §§ 3969-3985.

CHAPTER I.

COUNTY BOUNDARIES AND COUNTY SEATS.

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§ 3949. Santa Cruz.
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§ 3951. San Mateo.
§ 3952. Santa Clara.
§ 3953. Alameda.
§ 3954. Contra Costa.
§ 3955. Sonoma.
§ 3956. Solano.
§ 3957. Marin.
§ 3958. Napa.

§ 3901. County defined. A county is the largest political division of the state having corporate powers. En. March 12, 1872.

Cal.Rep.Cit. 60, 347; 114, 325; 133, 77.

County—Governments, secs. 4000-4347; legislature to provide a system of uniform, Const. Cal., art XI, sec. 4; consolidation with city, Id., art. XI, sec. 7. Limits: The several counties as existing, recognized as legal subdivisions of the state, Const. Cal., art. XI, sec 1; boundaries, post, secs. 3909-3958. New, formation of, Const. Cal., art. XI, sec. 3; see post, sec. 3975. Seat, removal of, Const. Cal., art. XI, sec. 2; see post, secs. 3976-3985.

§ 3902. Counties in state designated in this title. This state is divided into counties, named, bounded and constituted as provided in this title. En. March 12, 1872.

Cal.Rep.Cit. 114, 325.

Counties as they now exist, recognized as legal subdivisions of this state: Const. Cal., art. XI, sec. 1.

Boundaries and seats: Post, secs. 3909-3958. Disputed: Post, secs. 3969 et seq.

New county, act providing for transfer of fund on: See General Laws, title Counties.

Acts relating to boundary lines between certain counties: See General Laws, title County Boundaries.

§ 3903. Courses deemed true. In describing courses the words "north," "south," "east" and "west," mean true courses, and refer to the true meridian unless otherwise declared. En. March 12, 1872.

§ 3904. Directions deemed due. The words "northerly," "southerly," "easterly" and "westerly," mean due north, due south, due east and due west, unless controlled by other words, or by lines, monuments, or natural objects. En. March 12, 1872.

§ 3905. To, on, along, with or by a mountain or ridge defined. The words "to," "on," "along," "with," or "by" a mountain or ridge, mean summit point, or summit line, unless otherwise expressed. En. March 12, 1872.

§ 3906. To, by, along, with, in, up or down a creek, etc., defined. The words "to," "by," "along," "with," "in," "up" or "down" a creek, river, slough, strait, or bay, mean the middle of the main channel thereof, unless otherwise expressed. En. March 12, 1872.

Cal.Rep.Cit. 187, 205.

§ 3907. In, to, or from ocean shore, etc., defined. The words "in," "to" or "from" the ocean shore mean a point three miles from shore. The words "along," "with," "by" or "on" the ocean shore, mean on a line parallel with and three miles from the shore. En. March 12, 1872.

§ 3908. Mouth of creek, etc., defined. The mouth of a creek, river or slough which empties into another creek, river or slough, is the point where the middle of the channel intersects. En. March 12, 1872.

DEL NORTE.

§ 3909. Del Norte. Situated in the northwest corner of the state of California, beginning at a point in the Pacific

Ocean, on the forty-second parallel of north latitude, three miles from shore, being on the southern line of Oregon; thence running southerly, three miles from ocean shore, to a point on the northern line of Humboldt County, one mile south of the mouth of Klamath River; thence easterly, along the northern boundary of Humboldt County, to the summit of a spur of the Siskiyou range of mountains; thence northerly, following the summit of said spur of the Siskiyou range of mountains, to the forty-second parallel of north latitude; thence due west to the place of beginning. En. March 12, 1872. Am'd. 1887, 106.

Cal.Rep.Cit. 114, 325.

KLAMATH.

§ 3910. Klamath. Beginning at the southwest corner of Del Norte, as established in section 3909; thence southerly, by ocean shore, to a point west from the mouth of Mad River, forming southwest corner; thence east to a point in Trinity River, which forms common corner of Humboldt, Klamath and Trinity; thence northeasterly to and along Scott's Mountain to its point of intersection with the ridge dividing the waters which flow into Scott's, Shasta and Sacramento rivers on the north from the waters which flow into Salmon and Klamath rivers on the south, forming the common corner of Siskiyou, Klamath and Trinity; thence northerly to and along the last-mentioned ridge to the southeast corner of Del Norte, as established in section 3909; thence westerly along the southerly line of Del Norte to the place of beginning.

County seat—Orleans Bar. En. March 12, 1872.

Annexation of Klamath County to Humboldt and Siskiyou counties: See act in Stats. 1874, p. 755, and amendatory and supplementary act in Stats. 1876, p. 603.

SHASTA.

§ 3911. Shasta. Beginning at the northerly line of Tehama, at the head of Bloody Island, in Sacramento River; thence to and down the eastern channel to the mouth of Battle Creek; thence easterly, up Battle Creek, by the main channel, to the mouth of the middle fork, known as Digger Creek; thence up Digger Creek to its head; thence east to a point south of Black Butte Mountain, forming southeast corner; thence north, on western

line of Lassen, to a rock mound, forming northeast corner, on southern line of Siskiyou; thence west, on said southern line, to Castle Rock, forming northwest corner; thence southerly along Trinity Mountain to the head of Bee Gum Creek, forming southwest corner; thence easterly, down Bee Gum, Middle Fork and Cottonwood creeks to the western channel of Sacramento River; thence by direct line, to the point of beginning.

County seat—Shasta City. En. March 12, 1872.

LASSEN.

§ 3912. **Lassen.** Beginning at southwest corner, on the northern line of Sierra, as established in section 3921, at a point on the summit of the ridge which crosses said line, and which divides Long Valley from Sierra Valley; thence northwesterly, following said ridge, to a point due south from the town of Susanville; thence westerly, along the ridge separating the waters which flow into the east branch of the north fork of Feather River, running through Indian Valley, from those which flow into the north fork of Feather River, running through Mountain Meadows, to a point on said ridge south from the point where the old and present traveled road from the Big Meadows, via Hamilton's ranch, first crosses the said north fork; thence north, to a point east of the southeast corner of Shasta; thence west, along said extension line, to a point due south of Black Butte Mountain, being southeast corner of Shasta; thence north, to a point on southern line of Siskiyou marked by a rock mound, being northwest corner of Lassen and northeast corner of Shasta; thence east, along said line to the eastern boundary of the state; thence south along said state line, to the northeast corner of Sierra, as established in section 3921; thence west, along the line of Sierra, to the place of beginning.

County seat—Susanville. En. March 12, 1872.

Cal.Rep.Cit. 104, 291.

Survey of boundary line between Lassen and Siskiyou: Stats. 1872, p. 886.

SISKIYOU.

§ 3913. **Siskiyou.** Commencing on the northern line of the state of California, at the range line between ranges numbered four (4) and five (5) east of Mount

Diablo base and meridian; thence due south on said range line to the northern line of Shasta County; thence westerly along the northern line of Shasta and Trinity counties to the top of the ridge dividing the waters of the Salmon and its tributaries from the waters that flow into the Klamath and Trinity rivers and their tributaries, to where the Salmon enters the Klamath River; thence westerly on a direct line to the summit of the spur of the Siskiyou range of mountains; thence northeasterly, following the southeasterly line of Del Norte County, as described in section one of this act, to the forty-second parallel of north latitude; thence due east along the line dividing the states of Oregon and California, to the place of beginning. En. March 12, 1872. Am'd. 1887, 106.

See also act of March 28, 1874, as to partitioning of Klamath County, between Siskiyou and Humboldt counties: Ante, sec. 3910, note.

Modoc County, act creating: See General Laws, title Modoc County.

HUMBOLDT.

§ 3914. Humboldt. Beginning at southwest corner, of Klamath, as established in section 3910; thence east, to common corner of Klamath, Humboldt and Trinity, in Trinity River, as established by section 3910; thence southeasterly, up Trinity River, to the mouth of its south fork; thence southeasterly, along the eastern side of said south fork, one hundred feet above high water mark, to the mouth of Grouse Creek; thence south, to a point on the fortieth degree of north latitude, being on northern line of Mendocino, and forming southeast corner of Humboldt; thence west, on said line to the Pacific Ocean; thence northerly along the ocean shore, to the place of beginning.

County seat—Eureka. En. March 12, 1872.

Annexation of part of Klamath County to Humboldt: See sec. 3910, note.

TEHAMA.

§ 3915. Tehama. Beginning at the point of intersection of Sacramento River with south line of township twenty-three north, Mount Diablo base; thence west, on said line, being northern line of Colusa, to the summit of the Coast Range, being southwest corner; thence north-

erly, on said summit line to the southwest corner of Shasta, as established in section 3911; thence easterly, on the southern line of Shasta, as established in section 3911, to the northwest corner of Plumas, being the point of intersection of southern line of Shasta with the summit line of the dividing ridge between the waters of Mill and Deer creeks, tributaries of the Sacramento River, and Rice's and Warner's creeks, tributaries of the north fork of Feather River, forming northeast corner of Tehama; thence southerly, along said summit line, to the north point of Butte County, it being the point where the northern road from Big Meadows to Butte Meadows, by Dye's house crosses the said summit line; thence southwesterly, in a direct line, to the head of Rock Creek; thence southwesterly, down Rock Creek, to the south line of township twenty-four north, Mount Diablo base; thence west, on said line, to the Sacramento River; thence along said river to the place of beginning.

County seat—Red Bluff. En. March 12, 1872.

COLUSA.

§ 3916. Colusa. Beginning at southeast corner, being northeast corner of Yolo, in Sacramento River, at its intersection with the south line of township thirteen north, Mount Diablo base; thence west on said township line to the ridge dividing the waters flowing into Bear Creek and Stony Creek, from those flowing west into the north fork of Cache Creek and Clear Lake; thence northerly, along said ridge to the summit line of the Coast Range, being the western line of Lake, forming southwest corner of Colusa and northwest corner of Yolo; thence northerly on said summit and western boundary of Lake, through Hull's Mountain, to the southwest corner of Tehama, as established in section 3915; thence easterly on southern line of Tehama to initial point of Tehama, in Sacramento River on south line of township twenty-three; thence down said river to the southwest corner of the Llano Seco grant; thence northeasterly, along said grant line to its intersection with the northern boundary of township nineteen north; thence east to Butte Creek; thence down Butte Creek to Butte Slough; thence up Butte Slough to Sacramento River; thence down Sacramento River to the place of beginning.

County seat—Colusa. En. March 12, 1872.

Cal.Rep.Cit. 64, 179.

Location of boundary between Glenn and Colusa: See General Laws, title County Boundaries.

LAKE.

§ 3917. Lake. Beginning at the summit of Mount Hull, near Mount St. John, on the western line of Colusa, and forming the northeast corner of Lake and east corner of Mendocino; thence southerly and circuitously, by the summit line of the Mayacmas Range, being the dividing ridge between the waters flowing into the Russian and Eel rivers and those flowing easterly into Clear Lake, to the summit of Mount St. Helena; thence easterly along the line heretofore established, to the Buttes Canyon road; thence easterly, in a right line, to the most northern point of the Berryessa rancho; thence easterly along the northern line of said rancho, to the northeast corner thereof; thence east to the western line of Yolo County, as established in section 3929; thence northerly, on the western line of Yolo and Colusa counties, to the place of beginning.

County seat—Lakeport. En. March 12, 1872.

Boundary line between Lake and Yolo counties, act to more clearly define: Stats. 1872, p. 903.

MENDOCINO.

§ 3918. Mendocino. Beginning at the southwest corner of Humboldt, as established in section 3914; thence southwesterly by the ocean shore, to a point three miles west of Walhalla River; thence east to the mouth of said stream, and up the channel two miles; thence easterly in a direct line, on northern line of Sonoma, to the most northern and highest peak of Redwood Mountain; thence east to the western boundary of Lake, on the summit of the Mayacmas Ridge; thence northerly, along the western and northern boundary of Lake, as established in section 3917, to the northeast corner thereof; thence northerly, along the western boundaries of Colusa and Tehama, as established in sections 3915 and 3916, to a point on the line of the fortieth parallel of north latitude, forming the northeast corner of Mendocino and the southeast corner

of Trinity; thence west along said parallel, on southern line of Humboldt and Trinity, to the place of beginning.

County seat—Ukiah City. En. March 12, 1872.

TRINITY.

§ 3919. **Trinity.** Beginning at the northeast corner of Mendocino, as established in section 3918, on the summit line of the Coast Range; thence northerly, on said range and the western line of Tehama and Shasta, to the point of intersection with the southern line of Siskiyou, being northeast corner of Trinity and northwest corner of Shasta; thence westerly, on the ridge dividing the waters flowing south and west into Trinity and Salmon rivers from the waters flowing north and east into Scott's and Sacramento rivers, to common corner of Klamath, Siskiyou and Trinity, as established in section 3910; thence southwesterly, on the line of Scott's Mountain, being the southern line of Klamath, to common corner of Trinity, Klamath and Humboldt, as established in section 3909; thence southerly, by the eastern line of Humboldt, to the fortieth parallel of latitude, being the northern line of Mendocino, forming southwest corner; thence east, to the place of beginning.

County seat—Weaverville. En. March 12, 1872.

PLUMAS.

§ 3920. **Plumas.** Beginning on dividing ridge between the waters of Yuba and Feather rivers, at common corner of Yuba, Butte, and Plumas, established by survey and map of Joseph Johnston, county surveyor of Yuba County, July, eighteen hundred and fifty-seven, and indicated by a large spruce tree standing in front of the Buckeye House, marked "Corner of Plumas, Butte and Yuba"; thence northeasterly by direct line to the northwest corner of Sierra and the south corner of Plumas, in Slate Creek, at a point where the third course or terminating north and south line of survey of Keddie and Church, made June nineteenth, eighteen hundred and sixty-six, crosses said creek; thence northeasterly, up said creek, to the intersection of the first north and south line of said survey; thence north, on said line, to the initial point thereof, being the summit line of the ridge dividing the waters of Feather River from the waters of the Yuba River; thence

easterly, on said summit line, and east to "The Falls," about one mile below the outlet of Gold Lake; thence east, to the summit of the ridge which divides Long Valley from Sierra Valley, this point forming the most southern southwest corner of Lassen, as established in section 3912, also the southeast corner of Plumas; thence northwesterly, on the southwestern irregular line of Lassen, as established in section 3912, to the southeast corner of Shasta, as established in section 3911; thence west, on the southern line of Shasta, to the northeast corner of Tehama, as established in section 3915; thence southerly, on the ridge, being the eastern line of Tehama and Butte, to the point of intersection of a line running northwesterly from the initial point, at the Buckeye House, in line with said initial point and the southern edge of Walker's Plains; thence on said line to the place of beginning.

County seat—Quincy. En. March 12, 1872.

SIERRA.

§ 3921. **Sierra.** Beginning at the south corner of Plumas, in the center of State Creek, as established in section 3920; thence easterly, on southern line of Plumas, as established in said section, to the range line between township twenty-one north, range thirteen east, and township twenty-one north, fourteen east, Mt. Diablo meridian; thence north on said range line, to the northwest corner of township twenty-one north, fourteen east, Mount Diablo B. and M.; thence east on the line between townships twenty-one and twenty-two north, Mt. Diable base, to the state line forming the northeast corner; thence south on said state line to the northeast corner of Nevada County, a point east of the source of south fork of the Middle Yuba River; thence west to the source of and down the south fork and Middle Yuba River to a point ten miles above the mouth of the latter; thence in a straight line northerly to a point on the north fork of the Yuba River known as Cuteye Foster's Bar; down said river to the mouth of Big Canyon Creek, then up said creek four miles; thence in a straight line to the place of beginning.

County seat—Downieville. En. March 12, 1872. Am'd. 1873-4, 166.

BUTTE.

§ 3922. **Butte.** Beginning at the northwest corner of Yuba, in Feather River, at the mouth of Honcut Creek;

thence northeasterly, up the Honcut Creek and the north or Natchez branch of the same, to its source, on line established by surveyor-general, on survey of Westcoatt and Henning, eighteen hundred and fifty-nine; thence to the summit line of the ridge dividing the waters of the Yuba and Feather rivers; thence northeasterly, up said ridge, on line of said survey, to the third station tree westerly from the Woodville House; thence in a right line, fifty chains more or less, to a station tree easterly from said house about twenty-six chains—said right line passing about three chains northerly of said house; thence northeasterly on said ridge and survey, to a point on line of said survey a little westerly from the village of Strawberry Valley—which point is two thousand feet distant westerly, in right line from point of highest altitude on line of said survey east, and within three hundred yards of the village of Strawberry Valley; thence to the common corner of Plumas, Butte and Yuba, as established in section 3920; thence northwesterly, on southwesterly line of Plumas, as established in said section, to the most eastern southeastern corner of Tehama, as established in section 3915, forming also north corner of Butte; thence southwesterly on the southeasterly line of Tehama to the southeast corner of Tehama, at point of intersection of Rock Creek and southern line of township twenty-four north, Mt. Diablo base; thence west on said township line to the Sacramento River; thence down said river to the southwest corner of the Llano Seco grant; thence northeasterly, along said grant line to its intersection with northern boundary of township nineteen north; thence east to Watson's bridge, on Butte Creek; thence on Colusa County east line, down Butte Creek, to the northwest corner of Sutter County, as established in section 3926; thence east, on north line of Sutter County to Feather River; thence down Feather River to place of beginning.

County seat—Oroville. En. March 12, 1872. Am'd. 1873-4, 167.

NEVADA.

§ 3923. Nevada. Beginning at northwest corner, at a point in the main Yuba River, at the mouth of Deer Creek; thence up the main Yuba, to the mouth of the Middle

Yuba; thence up the latter, to the mouth of the south fork of the same; thence up the south fork, to its source; thence east, to the eastern line of the state, all on the southeastern and southern lines of Yuba and Sierra; thence south, along the state line, to the northeast corner of Placer, as established in section 3924; thence westerly, on the northern line of Placer, as established in said section, to the source of Bear River; thence down Bear River to a point south of the junction of Deer Creek and the main Yuba, forming southwest corner; thence north, to the place of beginning.

County seat—Nevada City. En. March 12, 1872.

PLACER.

§ 3924. **Placer.** Beginning at a point where the west line of township ten north, range five east, Mt. Diablo meridian, intersects the northern line of Sacramento County, as established in section 3928; thence north, on range line, to the northwest corner of section six, in township ten north, range five east; thence east, on township line, to the southwest corner of section thirty-one, township eleven north, range five east; thence north, on range line, to the northwest corner of township twelve north, range five east; thence east to the southwest corner of section thirty-four, township thirteen north, range five east; thence north, to Bear River; thence on southern line of Yuba and Nevada counties, up said river to its source; thence east, in a direct line, to the eastern line of the state of California, forming northeast corner; thence southerly, along said line, to the northeast corner of El Dorado, as established in section 3927; thence westerly, on the northern lines of El Dorado and Sacramento, as established in sections 3927 and 3928, to the place of beginning. En. March 12, 1872. Am'd. 1889, 402.

YUBA.

§ 3925. **Yuba.** Beginning at southwest corner, at junction of Feather and Bear rivers; thence up Bear River, on the line of Sutter and Placer, to southwest corner of Nevada, as established in section 2923; thence north, on Nevada line, to the junction of Deer Creek and main Yuba; thence up the Main to the Middle Yuba, and up the Middle Yuba ten miles, to the southwest corner of Sierra, as

established in section 3921; thence in direct line northerly, and on line of Sierra, to Cuteye Foster's Bar, on north Yuba River; thence down the river to the mouth of Big Canyon Creek; thence up said creek four miles; thence in direct line to south corner of Plumas and northwest corner of Sierra, in Slate Creek, as established in sections 3920 and 3921; thence northwesterly, in a direct line, to common corner of Plumas, Butte and Yuba, in front of Buckeye House, as established in section 3920; thence on southwestern line of Butte, as established in Westcoatt and Henning's survey and map, down the Honcut Creek to its junction with Feather River; thence down Feather River to the place of beginning.

County seat—Marysville. En. March 12, 1872.

SUTTER.

§ 3926. **Sutter.** Beginning at the northwest corner of Sacramento County, as established in section 3928; thence up the Sacramento River to the mouth of Butte Creek Slough; thence down said slough to the dividing line between sections thirty-five and thirty-six, township sixteen north, range one west, Mount Diablo base and meridian; thence north, on said line to Butte Creek; thence following said Butte Creek to its intersection with the south line of section nineteen, township seventeen north, range one east, Mount Diablo base and meridian; thence east, on section line to Feather River; thence down Feather River to mouth of Bear River; thence up Bear River to northwest corner of Placer County, as established in section 3924; thence along the western boundary of Placer County to the southwest corner thereof; thence westerly along the northern boundary of Sacramento County to the place of beginning. En. March 12, 1872. Am'd. 1891, 455.

Cal.Rep.Cit. 130, 139.

EL DORADO.

§ 3927. **El Dorado.** Beginning on the west corner, at the junction of the north and south forks of the American River; thence up the north fork to the mouth of the middle fork; thence up the middle fork to the mouth of the south fork of the middle fork at Junction Bar; thence up said last-named fork to a point where the same

is intersected by the Georgetown and Lake Bigler trail; thence along said trail to Sugar Pine Point, on the western shore of Lake Bigler; thence east to the state line; thence south and southeasterly, on the state line, to the northern corner of Alpine, being the point where the state line crosses the eastern summit line of the Sierra Nevada Mountains; thence southwesterly, along the western line of Alpine, as established in section 3931, to the common corner of Alpine, Amador and El Dorado, as established by said section; thence westerly, on the northern line of Amador, as established in section 3930, and down the Cosumnes River and south fork thereof to the eastern line of Sacramento, as established in section 3928; thence northerly, by the eastern line of Sacramento, to the south fork of the American River; thence down the latter to the place of beginning.

County seat—Placerville. En. March 12, 1872.

SACRAMENTO.

§ 3928. **Sacramento.** Beginning on the northern line of the county, at a point ten miles north of a point which was, on the thirtieth of March, eighteen hundred and fifty-seven, the mouth of the American River; thence easterly to the junction of the north and south forks of said river; thence up the principal channel of the south fork to a point one mile above Mormon Island, so as to include said island in Sacramento County, forming the northeast corner; thence southerly, to a point on the Cosumnes River, eight miles above the house of William Daylor; thence south to Dry Creek, forming southeast corner; thence down said Dry Creek to its entrance into the Mokelumne River; thence down the Mokelumne River to a point where said river divides into east and west branches; thence down the west branch to its junction with the east branch; thence down said river to its junction with the San Joaquin River; thence down the San Joaquin River to the mouth of the Sacramento River, at the head of Suisun Bay, forming southwest corner; thence up the Sacramento River to the mouth of Merritt Slough; thence up said slough to the mouth of Sutter Slough; thence up said Sutter Slough to the Sacramento River; thence up the Sacramento River to a point west of the place of beginning, forming the northeast corner of

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Sacramento County; thence east to the place of beginning. En. March 12, 1872. Am'd. 1877-8, 70.

Cal.Rep.Cit. 137, 205.

YOLO.

§ 3929. Yolo. Beginning on southeast corner, at the most easterly northeast corner of Solano, in Sutter Slough, at its intersection with the first Standard North; thence west on said standard line to west line of range three east, Mount Diablo meridian; thence north on said range line to the northeast corner of township seven north, two east; thence west nine and seventy-two one-hundredths chains to southeast corner of township eight, two east; thence north on easterly line of said township to the old bed of Putah Creek; thence westerly up the old bed and main Putah Creek, to a point on eastern line of Napa, in the canyon called Devil's Gate, where the highest ridge of mountains divides the waters of the Sacramento from Berryesa Valley, forming the most westerly of the southwest corners of Yolo and northwest corner of Solano; thence northerly along the highest ridge of said mountains to Cache Creek; thence east to the summit of the spur of the Coast Range, which divides the waters flowing east into Bear Creek and Stony Creek, and those flowing west into the north fork of Cache Creek; thence northerly along the said dividing ridge, following the divide of said waters to the summit of the Coast Range of mountains on the easterly line of Napa and Lake and to the southwest corner of Colusa, as established in section 3916; thence easterly, on southern line of Colusa, as established in said section, to Sacramento River, forming the northeast corner at the point of intersection of the southern line of township thirteen north, Mount Diablo base; thence down said river to Sutter Slough; thence down said slough to the place of beginning.

County seat—Woodland. En. March 12, 1872.

Cal.Rep.Cit. 130, 139; 137, 205.

Boundary between Lake and Yolo: Ante, sec. 3917.

AMADOR.

§ 3930. Amador. Beginning at the southwest corner, in the Mokelumne River, on the eastern boundary of San Joaquin, as established in section 3932; thence up said river to its junction with the north fork of the same;

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thence up the said north fork to the line of Alpine, being at a point south of the common corner of Amador, Alpine and El Dorado, which is in the center of the Amador and Nevada Road, in front of Z. Kirkwood's house, as established in section 3931; thence north by the line of Alpine to said common corner; thence westerly along said road to a point east of the source of the south fork of the south fork of the Cosumnes River; thence west to said source; thence down the south fork of the south fork and the south fork and the main Cosumnes River to the eastern line of Sacramento, as established in section 3928; thence by eastern lines of Sacramento and San Joaquin to the place of beginning.

County seat—Jackson. En. March 12, 1872.

ALPINE.

§ 3931. Alpine. Beginning at north corner, at a point where the state line crosses the east summit of the Sierra Nevada Mountains, being the most easterly corner of El Dorado; thence southwesterly, along said summit to a point two miles west of James Green's house, in Hope Valley, called Thompson's Peak; thence southwesterly, in a direct line, to a point on the Amador and Nevada turnpike road, in front of Z. Kirkwood's house, being common corner of Amador, Alpine and El Dorado; thence south, across the north fork of the Mokelumne River, to the road leading from West Point, in Calaveras, to Big Tree Road, near the Big Meadows; thence easterly, along said West Point Road to the Big Tree Road; thence easterly, in a direct line to where the Sonora trail strikes the middle fork of the Stanislaus River; thence easterly, along said trail to the summit of the Sierra Nevada Mountains; thence northerly, along said summit to the dividing ridge between West Walker and Carson rivers; thence northeasterly, along said dividing ridge to the state line, forming easterly corner of Alpine and northerly corner of Mono; thence northwest along said state line to the place of beginning.

County seat—Silver Mountain. En. March 12, 1872.

SAN JOAQUIN.

§ 3932. San Joaquin. Beginning at the junction of the San Joaquin and Mokelumne rivers, on the line of Sac-

ramento County; thence up the latter to the mouth of Dry Creek; thence up Dry Creek to the southeast corner of Sacramento, as established in section 3928; thence southeasterly, to a point on Mokelumne River, being the point of beginning of survey of Boucher and Wallace of line between San Joaquin and Calaveras counties, May, eighteen hundred and sixty-four; thence southeasterly, on the line of said survey, to the extreme northern corner of Stanislaus County, on north side of and near to Calaveras River, at a point on western line of range ten east, Mount Diablo meridian, as established by survey of George E. Drew, approved May, eighteen hundred and sixty, shown on map of said survey; thence south, on said range line, to Stanislaus River; thence down said river to its confluence with the San Joaquin; thence southwest to the summit of the Coast Range, as shown on survey and map of Wallace and Stakes May, 1868, and forming the common corner of San Joaquin, Stanislaus, Santa Clara and Alameda, as shown also on map of Boardman and Stakes, July, eighteen hundred and sixty-eight; thence northwesterly, following the summit of the said Coast Range to a post near the middle of section thirty-two, township four south, range four east; thence north to the southeast corner of Contra Costa, being a point on the west channel of the San Joaquin River as laid down on Gibbe's map, at a bend where the said west channel, running downward, takes a general course north, which point is shown on map of Boardman and Stakes, July, eighteen hundred and sixty-eight; thence down the said west channel to its confluence with the main river; thence down said river to the place of beginning.

County seat—Stockton. En. March 12, 1872.

STANISLAUS.

§ 3933. **Stanislaus.** Beginning at common corner of Stanislaus, Santa Clara, Alameda and San Joaquin, on the summit of Mount Boardman, of the Mount Diablo range, as shown on survey and map of Wallace and Stakes, May, eighteen hundred and sixty-eight; thence southeasterly, on the summit line of said range, being eastern line of Santa Clara, to the northwest corner of Merced, forming the southwest corner of Stanislaus, as established by survey and map of A. J. Stakes, July, eighteen hundred

and sixty-eight; thence northeasterly, on line as established by said last-named survey, to the junction of the Merced and San Joaquin rivers; thence down the San Joaquin seven miles; thence in a direct line a little north of east to a monument established by survey of A. J. Stakes, being on the summit of the ridge between Merced and Stanislaus, and marking common corner of Tuolumne, Merced, Mariposa and Stanislaus; thence northwesterly, in a direct line, and crossing the Stanislaus River, to monument established by survey and map of George E. Drew, May, eighteen hundred and sixty, on the north bank of said last-named river; thence northwesterly, on line of said survey, to its intersection with western line of range ten east, Mount Diablo meridian, which point is marked by a monument establishing the north corner of Stanislaus County; thence south, on said range line, to Stanislaus River; thence down the latter to its mouth, in San Joaquin River; thence southwesterly, on line as surveyed and mapped by Wallace and Stakes, May, eighteen hundred and sixty-eight, to the place of beginning.

County seat—Modesto. En. March 12, 1872.

MERCED.

§ 3934. Merced. Beginning at northwest corner, being southwest corner of Stanislaus, as shown on survey and map of A. J. Stakes, eighteen hundred and sixty-eight; thence northeasterly, on southern line of Stanislaus, as described in section 3933, to common corner of Tuolumne, Mariposa, Merced and Stanislaus, as established in said section; thence southeasterly, by direct line, being western line of Mariposa, to Phillips' Ferry, on Merced River; thence scutheasterly, on line of Mariposa, being line shown on "Map of Mariposa County," to Newton's Crossing on Chowchilla Creek, forming southeast corner; thence down the northern side and on high water mark, being on line of Fresno, to the lower clump of cottonwood timber at the sink of said creek; thence south, forty-five degrees west, to the eastern line of Monterey, on summit of Coast Range, forming southwest corner; thence northwesterly, by said summit and line of Monterey and Santa Clara, to the place of beginning.

County seat—Snelling. En. March 12, 1872.

MONO.

§ 3935. Mono. Beginning at north corner on state line, being east corner of Alpine, as established in section 3931; thence southwesterly, on the easterly line of Alpine, as established in section 3931, to the main summit of the Sierra Nevada Mountains; thence southerly, along said summit, on easterly line of Alpine, Tuolumne and Fresno, to a point where the northern line of township six south, Mount Diablo base, intersects said summit line, forming southwest corner; thence east, on said township line, being the northern line of Inyo, to the eastern line of the state, forming southeast corner; thence northwest, on the state line, to the place of beginning.

County seat—Bridgeport. En. March 12, 1872.

CALAVERAS.

§ 3936. Calaveras. Beginning at southern corner, at a point in the Stanislaus River where it intersects the eastern line of Stanislaus County, as established in section 3933, being a point one mile north of Knight's Ferry, and being the western corner of Tuolumne County; thence up said river and north fork thereof, to the easterly line of Alpine, as established in section 3931; thence northerly, on the line of Alpine, to the southeast corner of Amador, as established in sections 3930 and 3931; thence southwesterly, on the southern line of Amador, down the Mokelumne River, to the southwest corner of Amador, on the eastern line of San Joaquin County; thence southerly and southeasterly, on line of San Joaquin and Stanislaus, as established in sections 3932 and 3933, to the place of beginning.

County seat—San Andreas. En. March 12, 1872.

TUOLUMNE.

§ 3937. Tuolumne. Beginning at the most western corner, being the southern corner of Calaveras, as established in section 3936, in Stanislaus River; thence southeasterly to common corner of Merced, Mariposa, Stanislaus, and Tuolumne, as established in section 3933; thence easterly, on northern line of Mariposa, following summit line of the dividing ridge between Tuolumne and Merced rivers, to Mount Lyell, as marked on Warren Holt's map, eighteen

hundred and sixty-nine, and the summit of the Sierra Nevada Mountains, being on the western line of Mono and common corner of Tuolumne, Mariposa, and Fresno; thence northerly by the line of Mono, being the summit line of the Sierra Nevada Mountains, to the southern corner of Alpine, as established in section 3931; thence northwesterly by the line of Alpine to the southeastern corner of Calaveras; thence westerly on the line of Calaveras and down the Stanislaus River, to the place of beginning.

County seat—Sonora. En. March 12, 1872.

MARIPOSA.

§ 3938. **Mariposa.** Beginning at the initial point of Fresno County, being where the Stockton Road to Millerton crosses the Chowchilla Creek, known as Newton's Crossing; thence north forty-five degrees east, to the southwest corner of section eleven, township six south, range twenty east, Mount Diablo base and meridian; thence east, following section lines to main ridge between waters of Big Creek and Fresno River; thence easterly, on the main ridge which divides the waters of the Merced and San Joaquin rivers, to the intersection of the same with the summit line of the Sierra Nevada Mountains and western line of Mono, the same point forming the common corner of Tuolumne, Fresno, and Mariposa, as described in section 3937; thence westerly, by the southern boundary of Tuolumne, to the southwest corner thereof, being common corner of Stanislaus, Merced, Tuolumne, and Mariposa; thence southeasterly, on western line of Merced, as established in section 3934, to the place of beginning.

County seat—Mariposa. En. March 12, 1872.

Boundary line of Mariposa and Fresno counties: Act to better define, in Stats. 1872, p. 891. Am'd. by Stats. 1874, p. 100.

FRESNO.

§ 3939. **Fresno.** Beginning at southeast corner of Merced and southwest corner of Mariposa, being a point where the Stockton Road to Millerton crosses the Chowchilla Creek, known as Newton's Crossing; thence westerly down said stream, on the north side, on line of high-water mark, being on southeastern line of Merced, to the lower clump of cottonwood timber at the sink of

said creek; thence south, forty-five degrees west, and on line of Merced, to the eastern boundary line of Monterey, as described in section 3948, being on summit of Coast Range; thence following said boundary line on said summit, in a southeasterly direction to a point in the same, which point is south forty-five degrees west from the point on King's River where northern line of township sixteen south crosses the same; thence north, forty-five degrees east, to said point on King's River; thence east, along northern line of township sixteen south, to the dividing ridge between the waters of King's River and Kaweah River; thence easterly, on the said dividing ridge, to the summit of the Sierra Nevada, being the western line of Inyo; thence northwesterly, on the summit line and lines of Inyo and Mono, to Mount Lyell, the common corner of Tuolumne, Mariposa, and Fresno; thence westerly and southwesterly, on the southeasterly line of Mariposa, as established in section 3938, to the place of beginning.

County seat—Millerton. En. March 12, 1872.

County seat of Fresno permanently located at town of Fresno: Stats. 1874, p. 913.

Boundary line of Mariposa and Fresno counties: Ante, sec. 3938.

County line between Fresno and Tulare—Act to establish: Stats. 1876, p. 397, superseding like act in Stats. 1874, p. 700.

TULARE.

§ 3940. Tulare. Beginning at southwest corner, being common corner of Monterey, San Luis Obispo, Kern, and Tulare, and being the point where the line of the sixth standard south crosses the summit line of the Mount Diablo range of mountains; thence east, on said standard, to the point of intersection with summit line of the Sierra Nevada Mountains, forming the southeast corner of Tulare and the southwest corner of Inyo; thence northwesterly, on said summit, being on the western line of Inyo, to the east corner of Fresno, as established in section 3939; thence on the southern line of Fresno to the eastern line of Monterey; thence southerly, on the line of Monterey, as established in section 3948, to the place of beginning.

County seat—Visalia. En. March 12, 1872.

KERN.

§ 3941. **Kern.** Beginning at northwest corner, being common corner of San Luis Obispo, Monterey, Tulare, and Kern, as established in section 3940; thence east, on sixth standard south, Mount Diablo base, to the northwest corner of San Bernardino, as established in section 3943; thence south, on the westerly line of San Bernardino, to southern line of township nine north, San Bernardino base, forming southeast corner; thence west along said line and extension thereof to the summit of the Coast Range, being on the line of Santa Barbara, forming southwest corner; thence northwesterly, on said summit line, being eastern line of Santa Barbara and San Luis Obispo, to the place of beginning.

County seat—Havilah. En. March 12, 1872.

County seat has been changed to Bakersfield.

Act fixing boundary between San Luis Obispo and Kern counties: Stats. 1885, 139.

INYO.

§ 3942. **Inyo.** Beginning at the southeast corner of Tulare, as established in section 3940, being the point of intersection of sixth standard south, Mount Diablo base, with summit line of Sierra Nevada Mountains; thence east, by said standard and extension thereof, to the eastern line of the state, forming southeast corner; thence northwesterly, on state line, to the southeast corner of Mono, as established in section 3935; thence west on the southern line of Mono to the summit of the Sierra Nevada Mountains, being on the eastern line of Fresno, and forming the southwest corner of Mono and northwest corner of Inyo; thence southeasterly on said summit line to the place of beginning.

County seat—Independence. En. March 12, 1872.

SAN BERNARDINO.

§ 3943. **San Bernardino.** Beginning at the southwest corner, a little northwesterly of Laguna Temecula, at a point on the northern line of San Diego, as established in section 3944, where a south line drawn from the highest peak of the Sierra de Santiago intersects the said boundary line; thence northwesterly on the summit of said Sierra to the Santa Anna River, between the ranch of Sierra and the residence of Bernardo Yerba; thence across the Santa

Anna River along the summit of the range of hills that lie between the Cayotes and Chino (leaving the ranchos Gutiveras and Ybana to the west of this line) to the southwest corner of the ranch San Jose; thence northerly along the eastern boundaries of said ranch and of San Antonio and the western and northern boundaries of Cucaimonga ranch to the ravine of Cucaimonga; thence northerly up said ravine to its source in the Coast Range; thence north, on the easterly line of Los Angeles and Kern, to the sixth standard south, Mount Diablo base, being the northeast corner of Kern and northwest corner of San Bernardino; thence east by said standard line and extension thereof to the state line; thence southeasterly on said state line to the Colorado River; thence down said river to the northern boundary line of San Diego County; thence westerly along the northern boundary line of San Diego County, as established in section 3944, to the place of beginning.

County seat—San Bernardino. En. March 12, 1872.

Cal.Rep.Cit. 87, 288.

SAN DIEGO.

§ 3944. **San Diego.** Beginning at south corner of Los Angeles in the Pacific Ocean, opposite San Mateo Point; thence northerly along the western line of Rancho Santa Margarita to the southern line of Mission Viejo or La Paz; thence along the southern and eastern line of La Paz to a point two miles north of the south boundary line of township seven south, range six west, San Bernardino base and meridian; thence northeasterly, to the southwest corner of San Jacinto Nuevo, in township four south, range four west; thence north along west boundary of said rancho to line between townships three and four south; thence east to line between ranges two and three west; thence north on range line to a point where a line parallel with the southern boundary between the United States and Mexico will just clear the Rancho San Jacinto Viejo; thence northeasterly along such parallel line to the Colorado River; thence down that river to its junction with the boundary line between the United States and Mexico; thence westerly, following that boundary line into the Pacific Ocean; thence northerly to place of beginning.

County seat—San Diego. En. March 12, 1872.

Cal.Rep.Cit. 87, 288.

LOS ANGELES.

§ 3945. Los Angeles. Beginning at southeast corner of Santa Barbara, in the Pacific Ocean, at a point on extension line of the northern boundary of the rancho called Malaga, western corner; thence northeasterly, so as to include said rancho, to the northwest corner of the rancho called Triumfo, running on northerly line of the same to the northeast corner thereof; thence to the summit of the ridge of hills called Santa Susanna; thence in a direct line northwesterly, to the southwest corner of Kern, as established in section 3941, forming the northwest corner of Los Angeles; thence east, on southern line of Kern, to the western line of San Bernardino, as established in section 3943; thence southerly, on western line of San Bernardino to its point of intersection with northern line of San Diego, as established in said section; thence southwesterly, on San Diego line, as established in section 3944, to northwest corner of San Diego, in Pacific Ocean; thence northwesterly, along ocean shore to place of beginning; including the islands of Santa Catalina, San Clement, and the islands off the coast included in Los Angeles County.

County seat—Los Angeles. En. March 12, 1872.

SANTA BARBARA.

§ 3946. Santa Barbara. Beginning at the western corner of Los Angeles, as established in section 3945; thence northerly, on westerly line of Los Angeles, as described in said section, to the northwest corner thereof, on the summit of the Coast Range, being also the southwest corner of Kern, as established in section 3941; thence northwesterly, on the summit line, being also on western boundary of Kern, to a point of intersection with the southern line of township ten north, San Bernardino base; thence west, on said township line, to the Santa Maria River; thence down said river, and down the creek which divides that part of Guadalupe Rancho known as La Larga from that known as Oso Flacco, to a point in the Pacific Ocean opposite the mouth of said creek, forming northwest corner; thence southeasterly, by the ocean shore, to the place of beginning; including the islands of Santa Barbara, San Nicolas, San Miguel, Santa Rosa, and Santa Cruz.

County seat—Santa Barbara. En. March 12, 1872.

Creation of Ventura County out of the eastern part of Santa Barbara County: Stats. 1872, p. 484. Am'd. 1873-4, 365.

SAN LUIS OBISPO.

§ 3947. **San Luis Obispo.** Beginning in Pacific Ocean, at northwestern corner of Santa Barbara, as established in section 3946; thence easterly, on the northern line of Santa Barbara, up the Santa Maria River, to intersection of southern line of township ten north, San Bernardino base; thence east on said line to point on summit of Coast Range, forming the southeast corner, also northeast corner of Santa Barbara; thence northwesterly on summit line, being western line of Kern, to its intersection with sixth standard south, Mount Diablo base, being the common corner of Tulare, Kern, Monterey, and San Luis Obispo; thence west on said standard line and extension thereof to the Pacific Ocean; thence southerly along the shore to the place of beginning.

County seat—San Luis Obispo. En. March 12, 1872.

See the act fixing the boundary between San Luis Obispo and Kern counties, approved March 14, 1885; Stats. 1885, p. 139.

MONTEREY.

§ 3948. **Monterey.** Beginning in Pacific Ocean, at southwest corner of Santa Cruz, as established in section 3949; thence west to the mouth of Pajaro River, on the bay of Monterey; thence up said stream to its source, the small lake San Felipe; thence along the northern and western banks of said lake to the creek San Felipe; thence east to the summit line of the Coast Range, forming northeastern corner; thence southeasterly along the summit of the Coast Range to the sixth standard south, Mount Diablo base, being the common corner of San Luis Obispo, Kern, Tulare, and Monterey; thence following the northern boundary of San Luis Obispo County, on said standard line and extension thereof, to the Pacific Ocean; thence along the shore northerly to the place of beginning.

County seat—Monterey. En. March 12, 1872.

Creation of San Benito County out of the eastern part of Monterey County: Stats. 1874, p. 95. Supplementary act: Stats. 1874, p. 428. Latter act supplemented by Stats. 1876, p. 177. Original act amended 1887, 103. See General Laws, title County Boundaries.

SANTA CRUZ.

§ 3949. Santa Cruz. Beginning at the south corner of San Mateo County, at a point in the Pacific Ocean south forty-five degrees west, three miles from the intersection of the east line of Rancho Punta del Ano Nueva with said ocean, forming western corner; thence north, forty-five degrees east, to said point of intersection; thence northerly, following the eastern line of said rancho, to its intersection with the south line of township eight south, range four west, Mount Diablo base and meridian; thence east to the southeast corner of said township; thence north to the northeast corner of section twenty-five of said township; thence east to the northeast corner of section twenty-six, township eight south, range three west; thence north to the summit of Santa Cruz Mountains, being western line of Santa Clara County; thence southeasterly along the summit of said mountains on the western line of Santa Clara, to the Pajaro River, forming southeast corner, on northern line of Monterey; thence westerly along said river, on northern line of Monterey, to the bay of Monterey, and three miles westerly into the ocean, forming southwest corner; thence northwesterly along the shore to the point of beginning.

County seat—Santa Cruz. En. March 12, 1872.

SAN FRANCISCO (CITY AND COUNTY).

§ 3950. San Francisco. Beginning at the southwest corner, being northwest corner of San Mateo, in Pacific Ocean, on the extension of northern line of township three south, of Mount Diablo base; thence northerly along the Pacific Coast, to its point of intersection with westerly extension of low water line on northern side of the entrance to San Francisco Bay, being southwest corner of Marin and northwest corner of San Francisco; thence easterly, through Point Bonita and Point Caballo, to the most southeastern point of Angel Island, all on the line of Marin, as established in section 3957; thence northerly, along the easterly line of Marin, to the northwest point of Golden Rock (also known as Red Rock), being a common corner of Marin, Contra Costa, and San Francisco; thence due southeast four and a half miles, more or less, to a point distant three statute miles from the natural high water mark on the eastern shore of San Francisco Bay, being a common corner of Contra Costa, Alameda,

and San Francisco; thence southeasterly, in a direct line, to a point three miles from said eastern shore, and on the line first named (considered as extending across said bay); and thence west along said first named line to the place of beginning. The islands known as the Farralones shall be attached to and be a part of said city and county. En. March 12, 1872.

Cal.Rep.Cit. 114, 325.

SAN MATEO.

§ 3951. San Mateo. Beginning at the southwest corner, being the west corner of Santa Cruz County as established in section thirty-nine hundred and forty-nine; thence on the northwestern line of Santa Cruz County as established in said section, to the southwestern line of Santa Clara County, being the summit line of the Santa Cruz Mountains; thence northwesterly by said summit line to the source of San Francisquito Creek; thence down the south branch thereof, and down said creek to its mouth; thence to a point in the middle of San Francisco Bay, opposite said mouth, forming a common corner of San Mateo, Santa Clara, and Alameda counties; thence in a direct line to a point in the center of ship channel in the bay of San Francisco west of and opposite to Dumbarton Point; thence in a direct line to the southeast corner of San Francisco City and County; thence westerly on the boundary line between the counties of San Mateo and San Francisco (said line being the north boundary of San Mateo County, between San Mateo County and San Francisco County and the south boundary of San Francisco County between the counties of San Mateo and San Francisco) as the same was surveyed, established and marked by Charles S. Tilton, city and county surveyor of the city and county of San Francisco, William B. Gilbert, county surveyor of the county of San Mateo, and D. Bromfield, assistant civil engineer, of the county of San Mateo, between August twenty-eighth and December twenty-eighth, eighteen hundred and ninety-eight, and being the north boundary line of the county of San Mateo, and the south boundary line of the county of San Francisco, and marked by granite monuments eight inch by eight inch square set three feet in the ground in a bed of concrete three feet square and three feet in the ground, on section and quarter section corners, on township line between town-

ships two and three south, ranges five and six west, M. D. M., and the line being marked on each monument by a copper nail in a plug of lead which has been countersunk into the top of the monument, and on the dressed faces the letters "S. F." being cut into the stone on the San Francisco side of the line, and the letters "S. M." being cut into the stone in the San Mateo side of the line, and the bearing of the said line being determined by stellar observation as north eighty-nine degrees forty-nine and one-half minutes east, to the southwest corner of the said boundary line of San Francisco City and County in the Pacific Ocean, and thence southerly along the ocean shore to the point of beginning. The eastern boundary of San Mateo County shall be the western boundary of Alameda County, in so far as the same borders on San Mateo County. En. March 12, 1872. Am'd. 1877-8, 71; 1901, 291.

SANTA CLARA.

§ 3952. **Santa Clara.** Beginning at a point opposite the mouth of San Francisquito Creek, being the common corner of Alameda, San Mateo, and Santa Clara, as established in section 3951; thence easterly, to a point at the head of a slough, which is an arm of the bay of San Francisco, at its head, making into the main land in front of the Gegara Ranches; thence easterly, to a lone sycamore tree that stands in a ravine between the dwellings of Fluhencia and Valentine Gegara; thence easterly, up said ravine, to the top of the mountains, and as surveyed by Horace A. Higley, and shown on survey and map of Alameda County, eighteen hundred and fifty-seven; thence on a direct line easterly, to the common corner of San Joaquin, Stanislaus, Alameda, and Santa Clara, on the summit of the Coast Range, as established in section 3932; thence southeasterly, following the summit of the Coast Range, to the northeast corner of Monterey County, as established in section 3948; thence westerly, following the northern boundary of Monterey County to the southeast corner of Santa Cruz County, as established in section 3949; thence northwesterly, following the summit of the Santa Cruz Mountains, to the head of San Francisquito Creek; thence down said creek, to its mouth; thence in a direct line to the place of beginning.

County seat—San Jose. En. March 12, 1872.

ALAMEDA.

§ 3953. **Alameda.** Beginning at the southwest corner, being the common corner of San Mateo, Santa Clara, and Alameda, as established in section three thousand nine hundred and fifty-one; thence easterly, on northerly line of Santa Clara, as established in section three thousand nine hundred and fifty-two, to common corner of San Joaquin, Stanislaus, Santa Clara, and Alameda, as established in section three thousand nine hundred and thirty-two; thence northwesterly, on the west line of San Joaquin County, to the slough known as the Pescadora (being the west channel or "Old San Joaquin River"); thence westerly, in a straight line, until it strikes the dividing ridge in the direction of the house of Joze Harban, in Amador Valley; thence westerly along said ridge, crossing the gulch one half mile below Prince's Mill; thence to and running upon the dividing ridge between the Redwoods known as the San Antonio and Prince's Woods; thence along said ridge to the head of the gulch or creek (Cerreto Creek) that divides the ranches of the Peraltas from the San Pablo Ranches; thence down said gulch to its mouth; thence southwesterly to the common corner of San Francisco, Contra Costa, and Alameda, as established by section three thousand nine hundred and fifty; thence southerly, to a point in the bay of San Francisco that would intersect a line parallel with the north line of the Central Pacific Railroad Company's wharf (as it now is), if extended westerly five hundred feet towards Yerba Buena Island; thence southeasterly, in a line parallel with the east line of the city and county of San Francisco (which is the line now dividing said city and county from the county of Alameda), to its intersection with the south line of said city and county, as established in section three thousand nine hundred and fifty; thence easterly along said last mentioned line to the northeast corner of San Mateo; and thence southeasterly along the eastern line of San Mateo to the place of beginning. Horace A. Higley's survey map of Alameda County, eighteen hundred and fifty-seven, is declared to contain a more particular description of the line out of the bay of San Francisco.

County seat—City of Oakland; provided, that nothing in this act contained shall be construed to place "Yerba

Buena Island," or any part thereof, outside the limits of the city and county of San Francisco, but the same shall be deemed to be within said city and county, and the westerly boundary line of the county of Alameda shall not come within two thousand and five hundred feet of any part of said island. En. March 12, 1872. Am'd. 1873-4, 168.

CONTRA COSTA.

§ 3954. Contra Costa. Beginning in bay of San Francisco, at the northwest point of Red Rock, being the common corner of Marin, Contra Costa, and San Francisco, as established in section 3950; thence up the straits and bay of San Pablo, on eastern boundary of Marin, to point of intersection with line bearing south twenty-six and one half degrees east, and about six and one quarter miles distant from southwest corner of Napa County, as established in section 3958, forming common corner of Marin, Solano, Sonoma, and Contra Costa, as established in section 3955; thence to the straits of Carquinez; thence up said straits and Suisun Bay, to the mouth of the San Joaquin River; thence up said river, to the confluence of the west and main channels thereof, as laid down on Gibbe's map; thence up the said west channel, to a point about ten miles below Moore and Rhodes' Ranch, at a bend where the said west channel, running downward, takes a general course north, the point being on the westerly line of San Joaquin County, and forming the northeast corner of Alameda and southeast corner of Contra Costa; thence on the northern line of Alameda, as laid down on Horace A. Higley's map, and as established in section 3953, to the easterly line of San Francisco City and County, as established in section 3950; thence due northwest, along said easterly line of San Francisco, four and one half miles, more or less, to the place of beginning.

County seat—Martinez. En. March 12, 1872.

SONOMA.

§ 3955. Sonoma. Beginning at northwest corner, at a point in the Pacific Ocean west of the mouth of Walhalla River; thence east to the mouth of said river, and up the main channel two miles; thence easterly, in a direct line, to the most northern and highest peak or summit of the Redwood Mountains, immediately north of Cloverdale

and Oat Valley; thence east to the western boundary of Lake County, on the summit of the Mayacmas Ridge, forming northeast corner; thence southerly along the Mayacmas Mountains, and on the western lines of Lake and Napa counties, to the westerly branch of headwaters of Huichica Creek; thence westerly, on the line of Napa County, to the top of the main ridge that divides the Huichica Valley from the Sonoma Valley; thence southerly along the said dividing ridge to the tule bordering on San Pablo Bay; thence southerly, to the center of Huichica Creek; thence down said creek to its mouth, which is the southwest corner of Napa; thence on the line of Solano south, twenty-six and one half degrees east, about six and one quarter miles distant from the mouth of Huichica Creek, to the point of intersection with the westerly line of Contra Costa County, forming common corner of Marin, Solano, Contra Costa, and Sonoma, as described in section 3954; thence following the northern boundary of Marin westerly to the mouth of Petaluma Creek; thence up said creek to the mouth of San Antonio Creek, thence up said San Antonio Creek to its head; thence in a direct line to the head of the Estero Americano, on the line surveyed and established by William Mock, under the direction of the surveyor-general, in the year eighteen hundred and fifty-six; thence down said Estero Americano to its mouth; thence due west three miles to a point in the Pacific Ocean; thence northwesterly, by ocean shore, to the point of beginning.

County seat—Santa Rosa. En. March 12, 1872.

SOLANO.

§ 3956. Solano. Beginning at southwest corner, in San Pablo Bay, at common corner of Contra Costa, Sonoma, Marin, and Solano, as established in section 3954; thence north, twenty-six and one half degrees west, about six and one quarter miles on the western line of Sonoma, as established in section 3955 to the southwest corner of Napa, at the mouth of Huichica Creek; thence east, on southern line of Napa, to the southeast corner thereof, as established in section 3958; thence north, on line of Napa, as established in said section, to the first standard north; thence east, along said standard, on said Napa line, to the summit of Vaca Mountains; thence northerly, on said

summit and Napa line, to Devil's Gate, on Putah Creek, which point forms the northwest corner of Solano and southwest corner of Yolo; thence easterly, on line of Yolo, down said creek and old bed thereof, to its intersection with western line of range three east, Mount Diablo meridian, forming the northeast corner of Solano, with exterior angle in Yolo; thence south, along line of Yolo, on said range line, two and seven-tenths miles, to the north line of township seven north, Mount Diablo base; thence east, nine and seventy-two one hundredths chains, to northeast corner of said township; thence south, to the first standard north, Mount Diablo base; thence east, on said standard line, to the center of Sutter Slough; thence down said slough to Merrit Slough, down Merrit Slough to the Sacramento River, down the Sacramento River, about thirteen miles to Suisun Bay; thence down the bay, along the center of the main ship channel, in a westerly course, about eighteen miles, to the straits of Carquinez; thence down the middle of said straits, and down San Pablo Bay, to the place of beginning. All these courses and lines being as shown by map and notes of William Wayne Fitch and E. H. Marshall, surveyor and deputy surveyor of Solano County.

County seat—Fairfield. En. March 12, 1872.

Solano County seat located at Fairfield: Stats. 1874, p. 783.

MARIN.

§ 3957. Marin. Beginning in the Pacific Ocean, at southwest corner of Sonoma; thence southeasterly along southern line of Sonoma, as established in section 3955, to the mouth of Petaluma Creek; thence to common corner of Marin, Sonoma, Contra Costa, and Solano, in San Pablo Bay, as established in section 3955; thence southerly along the western boundary of Contra Costa, in the bay of San Pablo, to the middle of the straits of San Pablo; thence southerly in a direct line, to Invincible Rock, in the bay of San Francisco, near the entrance of the straits of San Pablo; thence in a direct line, to northwestern point of Red Rock; thence southerly to the extreme southeasterly point of Angel Island; thence southwesterly to the extreme end of Point Caballo at low-water mark; thence on the line of low-water mark along the northern shore of the bay to Point Bonita, and three miles

into the Pacific Ocean, to the northwestern corner of San Francisco, as established in section 3950; thence northwesterly by ocean shore to the place of beginning.

County seat—San Rafael. En. March 12, 1872.

NAPA.

§ 3958. **Napa.** Beginning at southwestern corner, at a point in Huichica Creek where the said creek empties into San Pablo Bay; thence east to the mountains dividing Napa Valley from Suisun Valley, forming southeastern corner; thence northerly along the summit line of said mountains to its intersection with the first standard north, Mount Diablo base, marked by a rock monument erected by Ralph Norris; thence east along said standard line seven and three fourths miles to Vaca Mountains, which divide the Vaca and Suisun valleys; thence northerly along the main ridge of said Vaca Mountains to Putah Creek, at a point called the Devil's Gate; thence northerly across said creek to and along the mountains dividing Berryessa Valley from Sacramento Valley to the southeast corner of Lake County on the western line of Yolo; thence westerly along the southern line of Lake, as established in section 3917, to its intersection with the eastern line of Sonoma; thence southeasterly on said line of Sonoma to the western branch of the headwaters of the Huichica Creek; thence westerly to the main ridge that divides the Huichica Valley from the Sonoma Valley; thence southerly along the said dividing ridge to the tule bordering on San Pablo Bay; thence southerly to the center of the Huichica Creek; thence down said creek to its mouth, the place of beginning.

County seat—Napa City. En. March 12, 1872.

Northern boundary line of Napa County adjoining Lake and Yolo counties, act to define: Stats. 1872, p. 305.

Part 4 Title 1

CHAPTER II.

GENERAL PROVISIONS RELATING TO COUNTIES.

§ 3969. Surveys to definitely establish unsettled boundaries.
§ 3970. Reports to surveyor-general on disagreement of supervisors.
§ 3971. Surveyor-general to determine boundary, or to order new surveys.
§ 3972. Approved surveys to be conclusive.
§ 3973. Previous surveys validated. Their force as evidence.
§ 3974. Apportionment of cost of survey. Payment.
§ 3975. Collection of old taxes when county is divided, or boundary altered.
§ 3976. Petition for change of county seat.
§ 3977. Supervisors to order election.
§ 3978. Notice of election, etc. (Repealed.)
§ 3979. Election, notice of; how held and conducted.
§ 3980. Voter to vote for place he prefers.
§ 3981. Notice of result.
§ 3982. Place chosen, to be county seat.
§ 3983. Statement of result deposited and notice transmitted.
§ 3984. No second election to be held within four years.
§ 3985. Subsequent removal of county seat.

§ 3969. Surveys to definitely establish unsettled boundaries. All common boundaries and common corners of counties not adequately marked by natural objects or lines, or by surveys lawfully made, must be definitely established by surveys jointly made by the surveyors of all the counties affected thereby, and approved by the boards of supervisors of such counties, or by a survey made by the surveyor-general, on application of the board of supervisors of any county affected thereby. En. March 12, 1872.

Cal.Rep.Cit. 110, 250.

§ 3970. Reports to surveyor-general on disagreement of supervisors. If the first mode is adopted, and the board of supervisors do not agree upon and finally approve the survey, each surveyor must make a report to the surveyor-general with surveys, maps, notes, and explanations touching disputed points. En. March 12, 1872.

§ 3971. Surveyor-general to determine boundary, or to order new surveys. Upon such reports the surveyor-general must finally determine and establish the common boundaries and corners, if he can collate a satisfactory description therefrom. If the reports are insufficient for such purpose, he must cause surveys to be made, and when approved by him the surveys establish such common boundaries and corners. En. March 12, 1872.

§ 3972. Approved surveys to be conclusive. All surveys finally approved under the provisions of this chapter are conclusive ascertainments of lines and corners included therein. En. March 12, 1872.

Cal.Rep.Cit. 56, 649.

§ 3973. Previous surveys validated. Their force as evidence. All surveys and maps of boundary lines heretofore legally made and approved, are declared valid, and they are prima facie evidence of the establishment of such lines, except so far as they are inconsistent with the provisions of this code. En. March 12, 1872. Am'd. 1873-4, 54.

Prima facie evidence defined: Code Civ. Proc., sec. 1833.

§ 3974. Apportionment of cost of survey. Payment. The cost of making such surveys must be apportioned equally among the counties interested, and the board of supervisors must audit the same, and the amounts must be paid out of the general county fund. En. March 12, 1872.

§ 3975. Collection of old taxes when county is divided, or boundary altered. When a county is divided or the boundary is altered, all taxes levied before the division was made or boundary changed must be collected by the officers of and belong to the county in which the territory was situated before the division or change. En. March 12, 1872.

Formation of new county: Const. Cal., art. XI, sec. 3.

County divided and new county created: See Const. Cal., art. XI, sec. 3.

§ 3976. Petition for change of county seat. Whenever the inhabitants of any county of this state desire to remove the county seat of the county from the place where it is fixed by law or otherwise, they may present a petition to the board of supervisors of their county, praying such removal, and that an election be held to determine to what place such removal must be made. En. March 12, 1872.

Cal.Rep.Cit. 48, 158; 49, 565; 51, 839.

Removal of county seat, number of elections that may be held for, only once in four years, by Const. Cal., art. XI, sec. 2: See post, sec. 3984.

§ 3977. Supervisors to order election. If the petition is signed by qualified electors of the county, equal in

number to at least three fifths of all the votes cast in the county at the last preceding general election, the board must at the next general election of county officers, submit the question of removal to the electors of the county. En. March 12, 1872. Am'd. 1873-4, 54; 1873-4, 170; 1880, 2.

General election, question of removal to be submitted at, under Const. Cal., art. XI, sec. 2.

§ 3978. Notice of election, etc. (Repealed.) En. March 12, 1872. Am'd. 1873-4, 55. Rep. 1880, 3.

§ 3979. Election, notice of; how held and conducted. Notice of such election, clearly stating the object, shall be given, and the election must be held and conducted and the returns made in all respects in the manner prescribed by law in regard to elections for county officers. En. March 12, 1872. Am'd. 1880, 2.

§ 3980. Voter to vote for place he prefers. In voting on the question, each elector must vote for the place in the county which he prefers as the seat of justice, plainly designating it in his ballot. En. March 12, 1872.

§ 3981. Notice of result. When the returns have been received and compared, and the results ascertained by the board, if two thirds of all the legal votes cast by those voting on the proposition are in favor of any particular place, the board must give notice of the result by posting notices thereof in all the election precincts in the county. En. March 12, 1872. Am'd. 1873-4, 55; 1880, 2.

Cal.Rep.Cit. 75, 179; 75, 180.

Conforms to Const. Cal. 1879, art. XI, sec. 2.

§ 3982. Place chosen, to be county seat. In the notice provided for in section 3981, the place selected to be the county seat of the county must be so declared from a day specified in the notice not more than ninety days after the election. After the day named in the notice the place chosen is the county seat of the county. En. March 12, 1872.

§ 3983. Statement of result deposited and notice transmitted. Whenever any election has been held as provided for in the preceding sections of this chapter, the statement made by the board of supervisors, showing the result

thereof, must be deposited in the office of the county clerk, and whenever the board gives the notice prescribed by section 3982 they must transmit a certified copy thereof to the secretary of state. En. March 12, 1872.

§ 3984. No second election to be held within four years. When the election has been held and two thirds of the votes are not cast for some other place than that fixed by law as the former county seat, no second election for the removal thereof must be held within four years thereafter. En. March 12, 1872. Am'd. 1880, 3.

Cal.Rep.Cit. 48, 158.

Conforms to Const. Cal. 1879, art. XI, sec. 2.

§ 3985. Subsequent removal of county seat. When the county seat of a county has been once removed, by a popular vote of the people of the county, it may be again removed from time to time in the manner provided by this chapter; but no election must be ordered to effect any such subsequent removal, unless a petition praying an election is signed by qualified electors of the county equal in number to at least three fourths of all the votes cast at the next preceding general election; nor unless at such election, when ordered, two thirds of all the votes cast are in favor of some other place as the county seat of the county; and such election, when so ordered, shall take place at the first general election held thereafter, nor must two elections to effect such removal be held within four years. En. March 12, 1872. Am'd. 1873-4, 55; 1873-4, 171; 1875-6, 64.

Cal.Rep.Cit. 48, 159.

Part 4

TITLE II.

THE GOVERNMENT OF COUNTIES.

Chapter I. Counties as Bodies Corporate, §§ 4000-4007.
II. The Board of Supervisors, §§ 4022-4087.
III. County Officers, §§ 4101-4316.
IV. Salaries and Fees of Office, §§ 4328-4334.
V. Other County Charges, §§ 4343-4347.

CHAPTER I.

COUNTIES AS BODIES CORPORATE.

§ 4000. Every county a body corporate.
§ 4001. Powers, how exercised.
§ 4002. Name and designation.
§ 4003. Enumeration of powers.
§ 4004. Restriction on loaning credit.
§ 4005. Restriction on temporary loans.
§ 4006. Classification of counties.
§ 4007. Same, governed by new census.

§ 4000. Every county a body corporate. Every county is a body politic and corporate, and as such has the powers specified in this code, or in special statutes, and such powers as are necessarily implied from those expressed. En. March 12, 1872. Am'd. 1880, 93.

Cal.Rep.Cit. 56, 3; 67, 252.

The act amending this section and sections 4003, 4004, 4006, 4022, 4023, 4024, 4025, 4026, 4028, 4029, 4046, 4087, 4103, 4104, 4109, 4115, 4116, 4119, 4165, 4192, 4204, 4221, 4256, 4314, 4328, 4329, 4344, repealing sections 4005, 4006, 4027, 4080, 4110, 4111, 4304, and adding sections 4292 and 4348 to the Political Code, approved April 27, 1880, was declared unconstitutional in Leonard v. January, 56 Cal. 1. Section in force inserted above.

County governments; uniform system of; legislature directed to provide, by Const. Cal., art. XI, sec. 4.

Powers: Post, sec. 4003. Restrictions on: Post, secs. 4004, 4005. By whom exercised: Post, sec. 4001.

Municipal corporations defined: Post, sec. 4356.

§ 4001. Powers, how exercised. Its powers can only be exercised by the board of supervisors, or by agents, and officers acting under their authority, or authority of law; provided, however, that whenever any board of

supervisors shall, without authority of law, order any money paid as a salary, fees, or for other purposes, and such money shall have been actually paid, or whenever the county clerk or county auditor has drawn any warrant or warrants in his own favor, or in favor of any other person, without being authorized thereto by the board of supervisors, or by the law, and the same shall have been paid, the district attorney of such county is hereby empowered, and it is hereby made his duty to institute suit in the name of the county, against such person or persons, to recover the money so paid, and twenty per cent damage for the use thereof, and no order of the board of supervisors therefor shall be necessary in order to maintain such suit; and, provided further, that when the money has not been paid on such orders, it is hereby made the duty of the district attorney of such county to commence suit in the name of the county, for restraining the payment of the same; and no order of the board of supervisors therefor shall be necessary in order to maintain such suit. En. March 12, 1872. Am'd. 1873-4, 171.

Cal.Rep.Cit. 67, 252.

County government act: See General Laws.

§ 4002. Name and designation. The name of a county designated in the law creating it is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties. En. March 12, 1872.

Names of counties, where given: Ante, sec. 3902.

Actions: See post, sec. 4003, subd. 1.

§ 4003. Enumeration of powers. It has power:

1. To sue and be sued;

2. To purchase and hold lands within its limits;

3. To make such contracts, and purchase and hold such personal property as may be necessary to the exercise of its powers.

4. To make such orders for the disposition or use of its property as the interests of its inhabitants require;

5. To levy and collect such taxes for purposes under its exclusive jurisdiction as are authorized by this code or by special statutes. En. March 12, 1872. Am'd. 1880, 93.

Cal.Rep.Cit. 56, 3; 67, 252; 137, 207. Subd. 3—56, 116.

Amendment 1880 declared unconstitutional: See sec. 4000, note. Section in force inserted above.

Acts in relation to counties: See General Laws, title Counties.

§ 4004. Restriction on loaning credit. No county must in any manner loan or give its credit to or in aid of any person unless it is expressly authorized by law so to do. En. March 12, 1872. Am'd. 1880, 93.

Cal.Rep.Cit. 56, 3.

Amendment 1880 declared unconstitutional: See sec. 4000, note. Section in force inserted above.

§ 4005. Restriction on temporary loans. No money must be borrowed on a temporary loan by any county except in anticipation of the taxes of the current fiscal year, and the same must always be made payable within eight months from the time of making the loan. En. March 12, 1872. Rep. 1880, 94. [See note below.]

Repealing act of 1880 was declared unconstitutional: See sec. 4000, note. Section in force inserted above.

§ 4006. Classification of counties. For purposes other than for roads and highways the counties of this state are classified as follows:

1. Those containing twenty thousand inhabitants or over constitute the first class;

2. Those containing eight thousand and under twenty thousand inhabitants constitute the second class; and,

3. Those containing less than eight thousand inhabitants constitute the third class. En. March 12, 1872. Am'd. 1880, 94.

Cal.Rep.Cit. 56, 3; 63, 177; 64, 89; 65, 112; 111, 367; 111, 368.

Amendment and repealing act of 1880 declared unconstitutional: See note to sec. 4000. Section in force inserted above.

§ 4007. Same, governed by new census. Whenever a new census is taken, the counties, on the first day of July next thereafter, are, by operation of law, classified under such census. En. March 12, 1872.

Cal.Rep.Cit. 64, 89; 64, 90; 65, 112.

CHAPTER II.

THE BOARD OF SUPERVISORS.

Article I. Organization and Terms of Board, §§ 4022-4035.
II. General Permanent Powers, §§ 4045-4052.
III. Other Powers and Restrictions, §§ 4064-4087.

ARTICLE I.*

ORGANIZATION AND TERMS OF THE BOARD.

§ 4022. Number of members in various classes of counties.
§ 4023. Member must be elector of district.
§ 4024. Term of office. (Repealed.)
§ 4025. Proceedings when number of members increased or decreased.
§ 4026. Vacancy, how filled.
§ 4027. Members, how classified for election. (Repealed.)
§ 4028. Chairman, permanent and temporary. Administration of oaths.
§ 4029. Clerk, and his compensation. Signature to records.
§ 4030. Duties of clerk.
§ 4031. Books to be kept by the board.
§ 4032. Regular meetings fixed. Other meetings.
§ 4033. Additional regular meetings may be fixed.
§ 4034. Special meetings, how called.
§ 4035. Meetings and records public.

§ 4022. Number of members in various classes of counties. Each county must have a board of supervisors, consisting:

1. In counties of the first class, of seven members;
2. In counties of the second class, of five members;
3. In counties of the third class, of three members. En. March 12, 1872. Am'd. 1880, 95.

Cal.Rep.Cit. 56, 3; 56, 105; 64, 89.

Amendment of 1880 declared unconstitutional: See sec. 4000, note. Section in force inserted above.

§ 4023. Member must be elector of district. Each member of a board of supervisors must be an elector of the district he represents. En. March 12, 1872. Am'd. 1880, 95.

Cal.Rep.Cit. 56, 3; 63, 178.

Amendment of 1880 declared unconstitutional: See note to sec. 4000. Section in force inserted above.

Elector, qualifications of: Ante, sec. 1083, and notes.

§ 4024. Term of office. (Repealed.) En. March 12, 1872. Am'd. 1880, 95. Rep. 1881, 73.

Cal.Rep.Cit. 56, 3; 56, 105; 58, 565; 62, 563.

§ 4025. Proceedings when number of members increased or decreased. If, under the classification, the number of

supervisors of any county is either increased or diminished, the board of supervisors must redistrict the county into supervisor districts, as nearly equal in population as may be, to correspond with the number of supervisors to which it is, under the new classification, entitled. If the number is increased, at the first general election thereafter supervisors must be elected for such new districts in which no supervisors then acting reside; and if the number is decreased, no successors must be elected for supervisors whose terms expire until the number is decreased to that to which the county is entitled. En. March 12, 1872. Am'd. 1880, 96.

Cal.Rep.Cit. 56, 3; 64, 89; 65, 112.

Amendment of 1880 declared unconstitutional: See note to sec. 4000. Section in force inserted above.

§ 4026. Vacancy, how filled. Whenever a vacancy occurs in the board of supervisors, from a failure to elect or otherwise, the county judge must fill the vacancy by appointing for the unexpired term some qualified elector of the district in which the vacancy occurs. En. March 12, 1872. Am'd. 1880, 96.

Cal.Rep.Cit. 56, 3.

Amendment of 1880 declared unconstitutional: See note to sec. 4000. Section in force inserted above.

§ 4027. Members, how classified for election. (Repealed.) En. March 12, 1872. Rep. 1880, 96; 1881, 73.

Cal.Rep.Cit. 58, 565; 62, 563.

§ 4028. Chairman, permanent and temporary. Administration of oaths. The chairman must preside at all meetings of the board, and in case of his absence or inability to act, the members present must, by an order, select one of their number to act as chairman temporarily. Any member of the board may administer oaths to any person concerning any matter submitted to them or connected with their powers or duties. En. March 12, 1872. Am'd. 1880, 96.

Cal.Rep.Cit. 56, 3.

Amendment of 1880 declared unconstitutional: See note to sec. 4000. Section in force inserted above.

§ 4029. Clerk, and his compensation. Signature to records. The clerk of the county is ex-officio clerk of the board of supervisors. The records must be signed by the

chairman and the clerk. The clerk must be paid such compensation as is provided by law, in full for all services as clerk of the board. En. March 12, 1872. Am'd. 1880, 96.

Cal.Rep.Cit. 52, 4; 56, 3.

Amendment of 1880 declared unconstitutional: See note to sec. 4000. Section in force inserted above.

§ 4030. Duties of clerk. The clerk of the board must:

1. Record all the proceedings of the board;

2. Make full entries of all their resolutions and decisions on all questions concerning the raising of money for, and the allowance of accounts against the county;

3. Record the vote of each member on any question upon which there is a division, or at the request of any member present;

4. Sign all orders made and warrants issued by order of the board for the payment of money, and when he is not also the county auditor, certify the same to that officer;

5. Record the reports of the county treasurer of the receipts and disbursements of the county;

6. Preserve and file all accounts acted upon by the board;

7. Preserve and file all petitions and applications for franchises, and record the action of the board thereon;

8. Record all orders levying taxes; and,

9. Perform all other duties required by law or any rule or order of the board. En. March 12, 1872.

Cal.Rep.Cit. 52, 4.

Signing records: See ante, sec. 4029.

§ 4031. Books to be kept by the board. The board must cause to be kept:

1. A "Minute Book" in which must be recorded all orders and decisions made by them, and the daily proceedings had at all regular and special meetings;

2. An "Allowance Book," in which must be recorded all orders for the allowance of money from the county treasury, to whom made, and on what account, dating, numbering, and indexing the same through each year.

3. A "Road Book," containing all proceedings and adjudications relating to the establishment, maintenance,

change, and discontinuance of roads, road districts, and overseers thereof, their reports and accounts.

4. A "Franchise Book," containing all franchises granted by them, for what purpose, the length of time and to whom granted, the amount of bond and license tax required;

5. A "Warrant Book," to be kept by the county auditor, in which must be entered, in the order of drawing, all warrants drawn on the treasury, with their number and reference to the order on the minute book, with the date, amount, on what account, and name of payee. En. March 12, 1872.

Cal.Rep.Cit. 72, 9.

§ 4032. Regular meetings fixed. Other meetings. The regular meetings of the boards of supervisors must be held at their respective county seats on the first Mondays in May, August, November, and February of each year, and must continue from time to time until all the business before them is disposed of. Such other meetings must be held, to canvass election returns, equalize taxation, and other purposes, as are prescribed in this code or provided for by the board. En. March 12, 1872.

Cal.Rep.Cit. 64, 298; 65, 311.

§ 4033. Additional regular meetings may be fixed. In the counties of the first and second classes additional regular meetings, not exceeding two in each year, may be provided for, fixed, and held for the transaction of business by an order duly entered of record, in which must be specified the character of business to be transacted at such additional regular meetings, and none other than that specified must be transacted. Notice of the order fixing such additional meetings must be published for four weeks, in a paper published in the county, before the ordinance is effective. En. March 12, 1872.

§ 4034. Special meetings, how called. If at any time after the adjournment of a regular meeting the business of the county requires a meeting of the board, a special meeting may be ordered by a majority of the board. The order must be entered of record, and five days' notice thereof must by the clerk, be given to each member not joining in the order. The order must specify the business to be transacted, and none other than that specified must be transacted at such special meeting. En. March 12, 1872.

§ 4035. Meetings and records public. All meetings of the board must be public and the books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection free of charge. En. March 12, 1872.

ARTICLE II.

GENERAL PERMANENT POWERS.

§ 4045. Power to impose license tax.
§ 4046. General permanent powers.
§ 4047. Power to direct attendance of sheriff—Contempt.
§ 4047. Contracts for printing, stationery and supplies, how made.
§ 4048. Funding outstanding indebtedness of counties. Form of bonds.
§ 4049. Custody, disposal, and account of bonds.
§ 4050. Assessments for bond fund.
§ 4051. Redemption of bonds.
§ 4052. Proceedings on failure to levy tax.

§ 4045. Power to impose license tax. The board of supervisors, in their respective counties, have jurisdiction and power, under such limitations and restrictions as are prescribed by law, and in addition to their other jurisdiction and powers, to impose a license tax, at a rate to be fixed annually by them, upon the following-named persons, occupations, and business:

1. Auctioneers, bridges, ferries, wharves, chutes, piers, persons engaged in banking, loaning money at interest, or in buying or selling notes, bonds, or other evidences of indebtedness of private persons; or in buying or selling state, county, or city stocks, or other evidences of state, county, or city indebtedness, or stocks; or notes, bonds, or other evidences of indebtedness of incorporated companies; or in buying or selling gold dust, gold or silver bullion, or gold or silver coin; proprietors of billiard tables not kept exclusively for family use, theaters, exhibitions of a caravan or menagerie, or any collection of animals, circus, or other acrobatic performance; each show for pay of any figures, jugglers, necromancers, magicians, wire or rope dancers, or sleight-of-hand exhibition; all pawnbrokers, keepers of intelligence offices, persons who sell spirituous, malt, or fermented liquors, or wine in less quantities than one quart.

2. Every person who, at a fixed place of business, sells any goods, wares, or merchandise, wines or distilled liquors, drugs or medicines, jewelry or wares of precious metals, whether on commission or otherwise (except agri-

cultural or vinicultural productions, or the productions of any stock, dairy, or poultry farm of this state, when sold by the producer thereof, and except such as are sold by auctioneers at public sale under license); all persons who keep horses or carriages for hire (except such as are used in the transportation of goods); every traveling merchant, hawker, or peddler who vends goods, wares, or merchandise of any kind, other than the manufactures or productions of this state; every person who keeps a stallion, jack, or bull, and who permits the same to be used for the purpose of propagation for hire; a license for propagation, obtained from the tax collector under the provisions of this act, shall entitle the holder thereof to the right to go into any county of this state for the purposes of propagation, without further license or expense. The provisions of this section do not apply to exhibitions or entertainments given for the benefit of churches, schools, or other charitable entertainments, by any amateur dramatic association or literary society of the town or district in which such exhibition or entertainment is given. The sale of liquors and wines by persons licensed under division two of this section must not be in less quantity than one quart measure. No license must be required of physicians, surgeons, apothecaries, or chemists for any wines or spirituous liquors they may use in the preparation of medicines.

3. The board of supervisors of each county must, on the first Monday of October of each year, fix the rates of county licenses; provided, that after the passage of this act said board of supervisors of each county may, at any general or special meeting of said board, held as required by law, fix the rates of said licenses up to the first Monday of October, A. D. eighteen hundred and eighty-three, and said licenses shall be collected at said rates for the year eighteen hundred and eighty-three until said rates are fixed on said first Monday of October, A. D. eighteen hundred and eighty-three.

4. The licenses herein provided for shall be collected as now provided for by the provisions of chapter fifteen, title seven, part three, of the Political Code of the state of California. En. Stats. 1883, 297.

Cal.Rep.Cit. 66, 643; 66, 644; 70, 59; 71, 247; 71, 248; 77, 542; 86, 256; 86, 257; 86, 258. Subd. 3 — 70, 59; 89, 229.

Licenses, generally: See ante, sec. 3356.
License in municipalities: See ante, sec. 3359.

§ 4046. General permanent powers. The boards of supervisors, in their respective counties, have jurisdiction and power under such limitations and restrictions as are prescribed by law:

1. To supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county charged with assessing, collecting, safe-keeping, management, or disbursement of the public revenues; see that they faithfully perform their duties; direct prosecutions for delinquencies; and when necessary, require them to renew their official bonds, to make reports, and to present their books and accounts for inspection.

2. To divide the counties into townships, school, road, and other districts required by law; change the same, and create others as convenience requires.

3. To establish, abolish, and change election precincts, and to appoint inspectors and judges of election, canvass all election returns, declare the result, and issue certificates thereof.

4. To lay out, maintain, control, and manage public roads, turnpikes, ferries, and bridges within the county, and levy such tax therefor as authorized by law.

5. To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county; erect, officer, and maintain hospitals therefor, or otherwise provide for the same; and to levy the necessary tax therefor, per capita, not exceeding three dollars, and an ad valorem tax not exceeding one fifth of one per cent, or either of such levies when both are not required, on all taxpayers and taxable property of the county.

6. To provide a farm in connection with the county hospital, and make regulations for working the same.

7. When there are no necessary county buildings, to provide suitable rooms for county purposes.

8. To purchase, receive by donation, or lease any real or personal property necessary for the use of the county, preserve, take care of, manage, and control the same; but no purchase of real property must be made unless the value of the same has been previously estimated by three disinterested citizens of the county appointed by them for

that purpose, and no more than the appraised value must be paid therefor.

9. To cause to be erected and furnished a courthouse, jail, hospital, and such other public buildings as may be necessary.

10. To sell at public auction at the courthouse door, after thirty days' previous notice, given by publication in a newspaper of the county, or posted in five public places of the county, and convey to the highest bidder, for cash, any property, real or personal, belonging to the county, paying the proceeds into the county treasury for the use of the county.

11. To examine and audit the accounts of all officers having the care, management, collection, or disbursement of moneys belonging to the county, or appropriated by law or otherwise for its use and benefit.

12. To examine, settle, and allow all accounts legally chargeable against the county, except salaries of officers, and order warrants to be drawn on the county treasurer therefor, and provide for the issuing of the same.

13. To levy such tax annually on the taxable property of the county, as may be necessary to defray the current expenses thereof, including salaries otherwise unprovided for, not exceeding one dollar on every one hundred dollars of value for any one year; and to levy such taxes as are required to be levied by special or local statutes.

14. To equalize the assessments.

15. To direct and control the prosecution and defense of all suits to which the county is a party.

16. To insure the county buildings in the name of and for the benefit of the county.

17. To grant licenses and franchises, as provided by law, for constructing, keeping, and taking tolls on roads, bridges, ferries, wharves, chutes, and piers.

18. To fix the compensation of all county officers not otherwise in this code or by general or special law fixed, and provide for the payment of the same.

19. To fill by appointment all vacancies that may occur in county or township offices, except those of county judge and supervisor.

20. To adapt to the county the provisions in this code for the preservation of the health of San Francisco or

Sacramento, for such limited time as they may deem proper, and to provide for the expenses thereof.

21. To contract for the county printing, and provide books and stationery for county officers.

22. At the adjournment of each session of the board to cause to be published in a newspaper, or otherwise, a fair statement of all their proceedings, and semi-annually a statement of the financial condition of the county.

23. To make regulations for the destruction of gophers, squirrels, other wild animals, and noxious weeds, and to levy a special tax of not exceeding three cents on each one hundred dollars of taxable property, wherewith to pay rewards therefor. To make regulations for the protection of game, fish, and shellfish, and for the prevention of injuries to sheep by dogs, and to tax dogs, and direct the application of the tax. When such regulations are made as provided in this section relating to game and fish, the laws of the state for the protection thereof are suspended in such county.

24. To make and enforce such rules and regulations for the government of their body, the preservation of order, and the transaction of business, as may be necessary.

25. To adopt a seal for their board, a description and impression whereof must be filed by their clerk in the offices of the county clerk and secretary of state.

26. To do and perform all other acts and things required by law not in this title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government. En. March 12, 1872. Am'd. 1880, 96.

Cal.Rep.Cit. 47, 509; 47, 510; 47, 511; 48, 320; 52, 4; 53, 393; 56, 3; 56, 116; 63, 260; 64, 471; 65, 114; 67, 253; 79, 379; 94, 626; 95, 85; 99. 38; 113, 165; 117, 616; 126, 623. Subd. 4—137, 206. Subd. 5—136, 654. Subd. 9 — 79, 380. Subd. 10—79, 379. Subd. 13—47, 513. Subd. 18—65, 115. Subd. 21—53, 393; 64, 470.

Amendment of 1880 declared unconstitutional: See note to sec. 4000. Section in force inserted above.

Subd. 3. The powers with respect to elections enumerated in subdivision 3, above: See post, secs. 4064, 4065.

See post, sec. 4409, as to power of supervisors over streets.

Subd. 12. Claims against county: See post, secs. 4071, 4076 et seq.

Subd. 14. Equalizing assessments: See ante, secs. 3672 et seq.

Licenses and franchises to collect tolls and wharfage: See ante, sec. 2916 and sec. 2524.

Printing and stationery: See post, sec. 4047, note.

Contracts for lighting: See how entered into: See General Laws, title Contracts.

Fixing water rates: See General Laws, title Water Companies.

§ 4047. Power to direct attendance of sheriff—Contempt. The board of supervisors shall have power to direct the sheriff to attend in person, or by deputy, all the meetings of the board, to preserve order, serve the notices or citations, as directed by the board. And the board shall have the same power to punish for contempt, by fine and imprisonment, as is now exercised and allowed by law to superior courts to require obedience to their citations and decorum in their meetings. En. Stats. 1873-4, 172. Am'd. 1880, 23.

Cal.Rep.Cit. 47, 509; 53, 394; 56, 115; 56, 116; 64, 471; 67, 336; 113, 166.

There is some confusion in reference to section 4047. The legislature of 1873-4, on March 18, 1874 (Amendment 1873-4, 172), added a new section of that number, and on March 30, 1874 (Amendments 1873-4, 56), added a second new section of the same number. The foregoing amendment of 1880 was expressly an amendment to the section as adopted on March 18, 1874. The legislature of 1877-8 amended section 4047, referring to it generally. That amendment is as follows:

§ 4047. Contracts for printing, stationery and supplies, how made. The supervisors must contract for:

1. All county printing;
2. All books and stationery;
3. All supplies for county institutions.

And all contracts must be made with the lowest bidder, and after ten days' public notice, that such contract will be let. The bidding must be by sealed proposals. En. Stats. 1873-4, 56. Am'd. 1877-8, 69.

Compare with sec. 3766, ante.

Attendance of witnesses, provisions concerning: Post, secs. 4067-4069.

See note to prior section 4047.

§ 4048. Funding outstanding indebtedness of counties. Form of bonds. The board of supervisors of any county having an outstanding indebtedness on the first day of January, eighteen hundred and eighty, evidenced by bonds or warrants thereof, by a vote of two thirds of all the members thereof, are empowered, if they deem it for the public interest, to fund and refund the same, and issue bonds of the county therefor in sums not less than one hundred dollars nor more than one thousand dollars each, having not more than twenty years to run, and bearing a rate of interest not exceeding seven per cent per annum, payable semi-annually, which bonds shall be substantially in the following form: No. ——. The county of ———, in the state of California, for value received, promises to pay ———, or order, at the office of the treasurer of said county, in ———, on the first day of ———, 18—, or at any time before that date, at the pleasure of the county, the sum of —— dollars, gold coin of the United States, with interest at the rate of —— per cent per annum, payable at the office of said treasurer, semi-annually, on the first days of ——— and ———, in each year, on presentation and surrender of the interest coupons hereto attached. This bond is issued by the board of supervisors, under the provisions of chapter —— of the Political Code of California, and in conformity with a resolution of said board, dated —— day of ———, 18—. Seal. In testimony whereof, the said county, by its board of supervisors, has caused this bond to be signed by the chairman of the board, and attested by the auditor, with the county seal attached, this —— day of ———, 18—. ———, chairman of board of supervisors. Attest: ———, auditor. And the interest coupon shall be in the following form: $——. The treasurer of ——— County, California, will pay to the holder hereof, on the —— day of ———, 18—, at his office in ———, —— dollars, gold coin, for interest on county bond No. ——, issued under provisions of chapter —— of the Political Code of California. ———, county auditor. En. Stats. 1880, 62. Am'd. 1881, 22.

Cal.Rep.Cit. 66, 26; 75, 457.

Funding city indebtedness: See post, sec. 4445.

§ 4049. Custody, disposal, and account of bonds. Whenever bonds issued under this chapter shall be duly executed, numbered consecutively and sealed, they shall be

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delivered to the county treasurer and his receipt taken therefor, and he shall stand charged on his official bond with all bonds delivered to him, and the proceeds thereof, and he shall sell the same or exchange them under the direction of the board of supervisors on the best available terms for any legal indebtedness of the county outstanding on the first day of January, eighteen hundred and eighty, but in neither case for a less sum than the face value of the bonds and all interest accrued on them at the date of such sale or exchange. And if any portion of the said bonds are sold for money, the proceeds thereof shall be applied exclusively for the payment of liabilities existing against the county at and before the date above named. When they are exchanged for bonds or warrants, or other legal evidences of county indebtedness, the treasurer shall at once proceed to cancel the old bonds and such other evidences of indebtedness, by indorsing on the face thereof the amount for which they were received, the word "canceled," and the date of cancellation. He shall also keep a record of bonds sold or exchanged by him by number, date of sale, amount, date of maturity, the name and postoffice address of purchasers; and if exchanged, what evidences of indebtedness were received therefor; which record shall be open at all times for inspection by the public. Whenever the holder of any bond shall sell or transfer it, the purchaser shall notify the treasurer of such purchase, giving at the same time the number of the bond transferred and his postoffice address; and every transfer shall be noted on the record. The treasurer shall also report, under oath, to the board at each regular session, a statement of all bonds sold or exchanged by him since the preceding report, and the date of such sale or exchange; and when exchanged, a list or description of the county indebtedness exchanged therefor, and the amount of accrued interest received by him on such sale or exchange, which latter sum shall be charged to him as money received by him on bond fund, and so entered by him on his books; but such bond shall not be sold or exchanged for any indebtedness of the county, except by the approval of the board of supervisors of said county. No sale shall be made of any such bonds, except to the highest bidder, after advertising bids for the purchase of the same for not less than three weeks in at least one

newspaper published in the county; the right being reserved in such advertisement to reject any or all such bids. En. Stats. 1880, 62.

§ 4050. **Assessments for bond fund.** The board of supervisors shall cause to be assessed and levied each year upon the taxable property of the county, in addition to the levy authorized for other purposes, a sufficient sum to pay the interest on outstanding bonds issued in conformity with the provisions of this chapter accruing before the next annual levy, and such proportion of the principal that at the end of five years the sum raised from such levies shall equal at least twenty per cent of the amount of bonds issued; at the end of nine years, at least forty per cent of the amount; and at and before the date of maturity of the bonds, shall be equal to the whole amount of the principal and interest; and the money arising from such levies shall be known as the bond fund, and shall be used for the payment of bonds and interest coupons, and for no other purpose whatever; and the treasurer shall open and keep in his books a separate and special account thereof, which shall at all times show the exact condition of said bond fund. En. Stats. 1880, 63.

§ 4051. **Redemption of bonds.** Whenever the amount in the hands of the treasurer belonging to the bond fund, after setting aside the sum required to pay the interest maturing before the next levy, is sufficient to redeem one or more bonds, he shall notify the owner of such bond or bonds, by advertising in any newspaper published in the county, not less than once a week for three successive weeks, and in some newspaper of general circulation published in the city of San Francisco, not less than once a week for three successive weeks, that he is prepared to pay the same, with all interest accrued thereon, and that if not presented for payment or redemption within forty days after the date of the publication of such notice, the interest on such bond shall cease, and the amount due thereon shall be set aside for its payment whenever presented. If said bonds are not so presented interest shall cease, and the amount due be set aside as specified in said advertisement. All redemptions shall be made in the exact order of their issuance, beginning at the lowest or first number, and the notice

herein required shall be directed to the postoffice address of the owner, as shown by the record kept in the treasurer's office. En. Stats. 1880, 64.

§ 4052. Proceedings on failure to levy tax. If the board of supervisors of any county which has issued bonds under the provisions of this chapter, shall fail to make the levy necessary to pay such bonds, or interest coupons, at maturity, and the same shall have been presented to the county treasurer, and the payment thereof refused, the owner may file the bond, together with all unpaid coupons. with the state controller, taking his receipt therefor, and the same shall be registered in the state controller's office; and the state board of equalization shall, at their next session, and at each annual equalization thereafter, add to the state tax to be levied in said county a sufficient rate to realize the amount of principal or interest past due, and to become due, prior to next levy, and the same shall be levied and collected as a part of the state tax, and paid into the state treasury, and passed to the special credit of such county as bond tax, and shall be paid by warrants, as the payments mature, to the holder of such registered obligations, as shown by the register in the office of the state controller, until the same shall be fully satisfied and discharged; any balance then remaining being passed to the general account and credit of said county. En. Stats. 1880, 64.

Cal.Rep.Cit. 75. 457.

ARTICLE III.

OTHER POWERS AND RESTRICTIONS.

§ 4064. Board to provide appliances for holding elections, and allow expenses.
§ 4065. Certificates issued, as board of canvassers.
§ 4066. Appointments to vacancies must be made on petition.
§ 4067. Power to require attendance of witnesses.
§ 4068. Examination of witnesses.
§ 4069. Officers and witnesses not to be prepaid.
§ 4070. When board must not contract debts or allow further accounts.
§ 4071. Claims of officers. Opposition to claims against county.
§ 4072. Account, mode of making out, and limit of time for presentation.
§ 4073. Account must be filed one day prior to session.
§ 4074. What claims to be rejected. Proceeding on part allowance.
§ 4075. Dissatisfied claimant may sue, within limited time. Costs on recovery.
§ 4076. What warrants must specify; order of payment.

§ 4077. In what transaction supervisors not to be interested.
§ 4078. Transfer of application, when majority of board not disinterested.
§ 4079. Notices, how given.
§ 4080. Board to provide for cultivating shade and ornamental trees.
§ 4081. To require assessors to report statistics.
§ 4082. Claims in favor of supervisors.
§ 4083. Statement of county indebtedness, assets and rate of taxation. (Repealed.)
§ 4084. To receive and apply donations of land, etc., for specific purposes.
§ 4085. To improve streams not navigable.
§ 4086. Penalty and damages recoverable on official bond.
§ 4087. Chapter does not apply to San Francisco.

§ 4064. Board to provide appliances for holding elections, and allow expenses. The board must provide all poll lists, poll books, blank returns and certificates, proclamations of elections, and other appropriate and necessary appliances for holding all elections in the county, and allow reasonable charges therefor, and for the transmission and return of the same to the proper officers. En. March 12, 1872.

§ 4065. Certificates issued, as board of canvassers. Whenever, as canvassers, the board of supervisors have declared the result of an election held in the county, certificates must be by their clerk issued to all persons elected to a county office or to a township or district office therein, and such other certificates must be made out and transmitted as required by the title relative to "Elections." En. March 12, 1872.

§ 4066. Appointments to vacancies must be made on petition. No appointment to fill a vacancy in office must be made by the board except upon petition, signed by at least thirty qualified electors of the county, if for a county office, or by not less than fifteen of the qualified electors of the township or district, if for a township or district office. En. March 12, 1872.

Cal.Rep.Cit. 55, 375; 63, 260.

§ 4067. Power to require attendance of witnesses. The board may, by their chairman or the chairman of any committee, issue subpœnas to compel the attendance of any person and the production of any books or papers relating to the affairs of the county, for the purpose of examination upon any matter within their jurisdiction. En. March 12, 1872.

§ 4068. Examination of witnesses. A witness is bound to attend, when served, and to answer all questions which he would be bound to answer in the same case before a court of justice. Disobedience to the subpœna, or to an order to attend, or to testify, may be enforced by the board, and for that purpose the board has all the powers conferred by, and the witness is subject to all the provisions of, chapter II, title III, part IV, of the Code of Civil Procedure. En. March 12, 1872.

Provisions of Code of Civil Procedure: Secs. 1985-1997.

§ 4069. Officers and witnesses not to be prepaid. Neither the officers serving subpœnas nor the witnesses subpœnaed to testify in relation to matters of public concern before the board of supervisors are entitled to have their fees prepaid, but officers must serve the subpœnas and witnesses must attend without their fees being prepaid. The board must allow them reasonable compensation for services and attendance. En. March 12, 1872.

§ 4070. When board must not contract debts or allow further accounts. The board must not for any purpose contract debts or liabilities, except in pursuance of law, or under ordinances of their own, adopted in accordance with the powers herein conferred; and whenever debts and liabilities have been created which, added to the salaries of county officers and other estimated liabilities fixed by law for the remainder of the year, equal in the aggregate the revenue of the county for current expenses, no further allowance of any accounts must be made. En. March 12, 1872.

Cal.Rep.Cit. 47, 512; 51, 37.

Loaning credit or borrowing money, restrictions on powers of county: Ante, secs. 4004-4005.

§ 4071. Claims of officers. Opposition to claims against county. No county officer shall, except for his own service, present any claim, account, or demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another. Any citizen and taxpayer of the county in which he resides may appear before the board and oppose the allowance of any claim or demand made against the county. En. March 12, 1872. Am'd. 1875-6, 65.

§ 4072. Account, mode of making out, and limit of time for presentation. The board of supervisors must not hear or consider any claim in favor of an individual against the county unless an account properly made out, giving all items of the claim, duly verified as to its correctness, and that the amount claimed is justly due, is presented to the board within a year after the last item of the account accrued. En. March 12, 1872.

Cal.Rep.Cit. 47, 508; 52, 351; 60, 165; 66, 77.

Claim presented by member of board: Post, sec. 4082.

§ 4073. Account must be filed one day prior to session. No account must be necessarily passed upon by the board unless made out as prescribed in the preceding section and filed by the clerk at least one day prior to the session at which it is asked to be heard. En. March 12, 1872.

§ 4074. What claims to be rejected. Proceedings on part allowance. When the board finds that any claim presented is not payable by the county, or is not a proper county charge, it must be rejected; if they find it to be a proper county charge, but greater in amount than is justly due, the board may allow the claim in part, and draw a warrant for the portion allowed, on the claimant filing a receipt in full for his account. If the claimant is unwilling to receive such amount in full payment the claim may be again considered at the next regular succeeding session of the board, but not afterward. En. March 12, 1872.

Cal.Rep.Cit. 67, 336.

§ 4075. Dissatisfied claimant may sue, within limited time. Costs on recovery. A claimant dissatisfied with the rejection of his claim or demand, or with the amount allowed him on his account, may sue the county therefor at any time within six months after the final action of the board, but not afterward; and if in such action judgment is recovered for more than the board allowed, on presentation of the judgment the board must allow and pay the same, together with the costs adjudged; but if no more is recovered than the board allowed, the board must pay the claimant no more than was originally allowed. En. March 12, 1872.

Cal.Rep.Cit. 67, 336.

§ 4076. What warrants must specify; order of payment. Warrants drawn by order of the supervisors on the county

treasury for the current expenses during each year, must specify the liability for which they are drawn, and when they accrued, and must be paid in the order of presentation to the treasurer. If the fund is insufficient to pay any warrant, it must be registered, and thereafter paid in the order of its registration. En. March 12, 1872.

Cal.Rep.Cit. 47, 508.

§ 4077. In what transaction supervisors not to be interested. No member of the board must be interested, directly or indirectly, in any property purchased for the use of the county, nor in any purchase or sale of property belonging to the county, nor in any contract made by the board or other person on behalf of the county, for the erection of public buildings, the opening or improvement of roads, or the building of bridges, or for other purposes. En. March 12, 1872.

Prohibitions applicable to certain officers: Ante, secs. 920-926. Not to be interested in any contract made by them in their official capacity: Ante, sec. 920.

§ 4078. Transfer of application, when majority of board not disinterested. Whenever an application is made to the board for an order, franchise, or license relating to any toll road, bridge, ferry, wharf, chute, pier, or other subject over which the board has jurisdiction, in which a majority of the board are not disinterested, the application, by order of the board, must be transferred to the board of supervisors of an adjoining county; the clerk of the board must thereupon certify the application and all orders and papers relating thereto to the board to which the transfer is ordered; and thereafter the board to which the same is certified has full jurisdiction to hear and determine the application. En. March 12, 1872. Am'd. 1880, 23.

Toll road, bridge, ferry, etc.: See ante, secs. 2779-2921.

Power of board, generally, over toll franchises and licenses: Ante, sec. 4046, subd. 17.

Interested supervisors not to act on toll matters: Ante, sec. 2852.

§ 4079. Notices, how given. All public notices of proceedings of or to be had before the board, not otherwise specially provided for, must be posted at the courthouse door, and in each election precinct in the county. En. March 12, 1872. Am'd. 1873-4, 56.

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§ 4080. Board to provide for cultivating shade and ornamental trees. The board, under such regulations as they may adopt, must encourage the planting and preservation of shade and ornamental trees on the public roads and highways, and on and about the public grounds and buildings of the county, and pay to persons planting and cultivating the same, for every living tree thus planted, at the age of four years, the sum of one dollar. En. March 12, 1872. Rep. 1880, 100. [See note below.]

The repealing act of 1880 was declared unconstitutional: See sec. 4000, note. Section in force inserted above.

§ 4081. To require assessors to report statistics. The board must require assessors to report to the surveyor-general annually a true statement of the agricultural and industrial pursuits and products of the county, with such other statistical information as they may by ordinance direct, and enforce obedience of the assessor thereto by deducting such proportion of his compensation as assessor as to them may seem appropriate, for a failure to comply with the order. En. March 12, 1872.

§ 4082. Claims in favor of supervisors. All claims against the county presented by members of the board of supervisors for per diem and mileage or other service rendered by them, must be verified as other claims, and must state that the service has been actually rendered. En. March 12, 1872.

Verified as other claims: See ante, sec. 4072.

§ 4083. Statement of county indebtedness, assets and rate of taxation. (Repealed.) En. March 12, 1872. Am'd. 1877-8, 66. Rep. 1897, 436.

§ 4084. To receive and apply donations of land, etc., for specific purposes. The board must receive from the United States or other sources lands and other property granted or donated to the county for the purpose of aiding in the erection of county buildings, roads, bridges, or other specific purposes, and may use the same therefor, and may provide for the sale of the same and the application of the proceeds thereof. En. March 12, 1872.

§ 4085. To improve streams not navigable. The board may provide for widening, deepening, straightening, re-

moving obstructions from, and otherwise improving all streams within the county for use as public highways for rafting and floating lumber, and also protecting the banks and adjacent lands from overflow of such streams, when the same are not declared by law to be, and in fact are not, navigable for commercial purposes, and provide regulations for the use, repair, and control thereof; but no regulations of the board, nor improvements directed, must in any manner interfere with the private rights or privileges of riparian owners, miners, or others. En. March 12, 1872. Am'd. 1893, 111.

Floating lumber: Ante, sec. 2389.

Navigable streams: Ante, sec. 2348.

§ 4086. Penalty and damages recoverable on official bond. Any supervisor who neglects or refuses to perform any duty imposed on him, without just cause therefor, or who willfully violates any law provided for his government as such officer, or fraudulently or corruptly performs any duty imposed on him, or willfully, fraudulently, or corruptly attempts to perform an act as supervisor, unauthorized by law, in addition to the penalty provided in the Penal Code, forfeits to the county five hundred dollars for every such act, to be recovered in his official bond, and is further liable on his official bond to any person injured thereby for all damages sustained. En. March 12, 1872.

Cal.Rep.Cit. 62, 181; 72, 519; 72, 522.

§ 4087. Chapter does not apply to San Francisco. This chapter does not apply to the city and county of San Francisco. En. March 12, 1872. Am'd. 1880, 100.

Cal.Rep.Cit. 58, 705; 56, 8; 66, 77.

Amendment of 1880 declared unconstitutional: See note to sec. 4000. Section in force inserted above.

CHAPTER III.

COUNTY OFFICERS.

Article I. General Provisions, §§ 4101-4124.
II. County Judge, § 4134.
III. County Treasurer, §§ 4144-4165.
IV. Sheriff, §§ 4175-4193.
V. County Clerk, §§ 4204-4205.
VI. County Auditor, §§ 4215-4224.
VII. County Recorder, §§ 4234-4246.
VIII. District Attorney, §§ 4256-4259.
IX. County Surveyor, §§ 4268-4275.
X. Coroner, §§ 4285-4290.
XI. Assessors, Tax Collectors, School Superintendent, Public Administrator, and Commissioner of Highways, §§ 4300-4304.
XII. Constables, Justices of the Peace, and Inferior Officers, §§ 4814-4816.

ARTICLE I.

GENERAL PROVISIONS.

§ 4101. Qualifications for county office.
§ 4102. Same for district and township offices.
§ 4103. County officers enumerated.
§ 4104. Township officers.
§ 4105. Offices united and consolidated.
§ 4106. Consolidation of offices by the board.
§ 4107. Proceedings on omission to consolidate and advertise the consolidation.
§ 4108. Oath, bond, and compensation of consolidated offices.
§ 4109. County and other officers, when elected, and term of office.
§ 4110. County judges and justices of peace; election and term of office.
§ 4111. Supervisors, when elected. (Repealed.)
§ 4112. County and township officers may generally appoint deputies at discretion.
§ 4113. Mode of making appointments of assistants.
§ 4114. Official mention of principal officer includes deputies.
§ 4115. Vacancies, how filled.
§ 4116. What offices to be kept open at county seat. County judge and his chambers.
§ 4117. Civil penalty for misconduct in office attaches to official bond.
§ 4118. County officers may administer oaths.
§ 4119. Certain officers must reside at county seat.
§ 4120. Absence of county officers from state.
§ 4121. Certain officers prohibited from practicing law, etc.
§ 4122. Official bonds classified, and amounts thereof.
§ 4123. When amount of bond is not fixed by law.
§ 4124. Other provisions relating to county officers.

§ 4101. Qualifications for county office. No person is eligible to a county office who at the time of his election is not of the age of twenty-one years, a citizen of the state, and an elector of the county in which the duties of the office are to be exercised. En. March 12, 1872.

Majority and citizenship as qualifications for civil office: See ante, sec. 841.

Elector defined: Sec. 59, ante.

§ 4102. **Same for district and township offices.** No person is eligible to a district or township office who is not of the age of twenty-one years, a citizen of the state, and an elector of the district or township in which the duties of the office are to be exercised or for which he is elected. En. March 12, 1872.

Cal.Rep.Cit. 79, 473.

§ 4103. **County officers enumerated.** The officers of a county are: A county judge, a treasurer, a county clerk, an auditor, a sheriff, a tax collector, a district attorney, a recorder, an assessor, a surveyor, a school superintendent, a coroner, a public administrator, a board of supervisors, and, in counties of the first class, for highway purposes, a commissioner of highways. En. March 12, 1872. Am'd. 1880, 100.

Cal.Rep.Cit. 56, 3; 56, 465; 67, 117; 112, 71; 127, 161; 128, 420.

Amendment 1880 declared unconstitutional: See sec. 4000, note. Section in force inserted above.

§ 4104. **Township officers.** The officers of townships are: Two justices of the peace, two constables, and such other inferior and subordinate officers as are provided for elsewhere in this code, or by the board of supervisors. En. March 12, 1872. Am'd. 1880, 100.

Cal.Rep.Cit. 56, 3.

Amendment of 1880 declared unconstitutional: See sec. 4000, note. Section in force inserted above.

§ 4105. **Offices united and consolidated.** In all the counties of the third class:

1. The county clerk shall be ex-officio auditor and recorder;

2. The sheriff shall be ex-officio tax collector; and,

3. The coroner shall be ex-officio public administrator. En. March 12, 1872.

Cal.Rep.Cit. 56, 4; 69, 531.

§ 4106. **Consolidation of offices by the board.** By an ordinance adopted, recorded and published at least three

months prior to a general election at which county officers are to be elected, the boards of supervisors of counties of the second class may unite and consolidate certain offices by declaring that:

1. The recorder elected shall be ex-officio auditor;

2. The county clerk elected shall be ex-officio auditor and recorder;

3. The sheriff elected shall be ex-officio tax collector; and,

4. The coroner elected shall be ex-officio public administrator. En. March 12, 1872.

Cal.Rep.Cit. 52, 311; 56, 4; 64, 92; 65, 113.

§ 4107. Proceedings on omission to consolidate and advertise the consolidation. When there is an omission by the board of supervisors to consolidate and to advertise the consolidation of offices as in the preceding section authorized, each office not so consolidated must be filled by an election. En. March 12, 1872.

Cal.Rep.Cit. 52, 311; 52, 312; 64, 92.

§ 4108. Oath, bond, and compensation of consolidated offices. When offices are united and consolidated either by the code or by order of the supervisors, the person elected to fill the offices so united and consolidated must take the oath and give the bond required for each, discharge all the duties pertaining to each, and receive the compensation affixed to the offices. En. March 12, 1872.

Cal.Rep.Cit. 68, 514.

§ 4109. County and other officers, when elected, and term of office. All elective county, city and county, and township officers, except superior court judges, superintendents of schools, and assessors, shall be elected at the general election to be held in the year eighteen hundred and eighty-two, and at the general election to be held every second year thereafter, and shall take office on the first Monday after the first day of January next succeeding their election, and shall hold office for two years. The years that said officers are to hold office are to be computed respectively from and including the first Monday after the first day of January of any one year to and excluding the first Monday after the first day of January of the next succeeding year; provided, that all

supervisors and justices of the peace shall take office on the first Monday after the first day of January next succeeding their election, and shall hold office for two years. The years during which a supervisor and justice of the peace is to hold office are to be computed respectively from and including the first Monday of January of any one year to and excluding the first Monday of January next succeeding. Assessors of every county, and of every city and county, shall be elected at the general election to be held on the first Tuesday after the first Monday in November, eighteen hundred and eighty-two, and at the general election to be held every four years, thereafter, and shall hold office for the term of four years from and after the first Monday after the first day of January next succeeding their election. En. March 12, 1872. Am'd. 1873-4, 173; 1880, 100; 1881, 73.

Cal.Rep.Cit. 56, 3; 56, 105; 58, 565; 61, 324; 62, 563; 62, 567; 62, 569; 62, 571; 62, 572; 62, 573; 62, 574; 67, 117; 114, 322; 114, 329; 114, 335; 116, 112; 116, 113; 126, 393.

§ 4110. County judges and justices of peace; election and term of office. The election and terms of office of county judges and justices of the peace are provided for in title I of the Code of Civil Procedure. En. March 12, 1872. Rep. 1880, 101. [See note below.]

Cal.Rep.Cit. 56, 4.

Repealing act of 1880 was declared unconstitutional: See sec. 4000, note. Section in force inserted above.

§ 4111. Supervisors, when elected. (Repealed.) En. March 12, 1872. Rep. 1880, 101; 1881, 73.

Cal.Rep.Cit. 56, 4; 56, 105; 58, 565; 62, 563.

§ 4112. County and township officers may generally appoint deputies at discretion. Every county and township officer, except county judge, supervisor, and justice of the peace, may appoint as many deputies as may be necessary for the faithful and prompt discharge of the duties of his office. En. March 12, 1872.

Cal.Rep.Cit. 64, 220; 77, 48; 102, 251; 107, 232.

Deputies' powers, duties, etc.: Ante, sec. 865. Official bond may be required from, by party appointing: Sec. 985. Appointing: Ante, sec. 876. Aliens, prohibition of appointment of certain: Stats. 1880, p. 23.

§ 4113. Mode of making appointments of assistants. The appointment of deputies, clerks, and subordinate officers of counties, districts, and townships must be made in writing, and filed in the office of the county clerk. En. March 12, 1872.

§ 4114. Official mention of principal officer includes deputies. Whenever the official name of any principal officer is used in any law conferring power, imposing duties or liabilities, it includes his deputies. En. March 12, 1872.

Cal.Rep.Cit. 77, 47.

§ 4115. Vacancies, how filled. A vacancy in the office of county judge is filled by an appointee of the governor. All other vacancies in county and township offices are filled by appointments made by the board of supervisors. Appointees hold until the vacancies are filled by election. En. March 12, 1872. Am'd. 1880, 101.

Cal.Rep.Cit. 56, 3; 60, 289; 67, 13.

Amendment of 1880 declared unconstitutional: See sec. 4000, note. Section in force inserted above.

Vacancies generally: Ante, secs. 996, 997, 1004. In board of supervisors: Ante, sec. 4026.

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§ 4116. What offices to be kept open at county seat. County judge and his chambers. Sheriffs, clerks, recorders, treasurers, tax collectors, district attorneys, and auditors, must have their offices at the county seat, and keep them open for the transaction of business from nine o'clock A. M. till five o'clock P. M., every day in the year, except holidays. The county judge must have chambers at the county seat, and must establish such rules and hours for official business as may be necessary for the dispatch thereof. He must attend at his chambers at least one day in each week. En. March 12, 1872. Am'd. 1880, 101.

Cal.Rep.Cit. 56, 3.

Amendment of 1880 declared unconstitutional: See sec. 4000, note. Section in force inserted above.

§ 4117. Civil penalty for misconduct in office attaches to official bond. Whenever, except in criminal prosecutions, any special penalty, forfeiture, or liability is imposed on any officer for non-performance or mal-perform-

ance of official duty, the liability therefor attaches to the official bond of such officer, and to the principal and sureties thereon. En. March 12, 1872.

Official bonds: Ante, secs. 947-987.

§ 4118. County officers may administer oaths. Every officer mentioned in section four thousand one hundred and three, and every justice of the peace, may administer and certify oaths. En. March 12, 1872.

Cal.Rep.Cit. 56, 465; 128, 420.

Administration of oaths and affirmations: Code Civ. Proc., secs. 2093-2097.

§ 4119. Certain officers must reside at county seat. The following officers must reside at the county seat of their respective counties: The county judge, the treasurer, the county clerk, the auditor, the sheriff, the tax collector, the district attorney, the recorder. En. March 12, 1872. Am'd. 1880, 101.

Cal.Rep.Cit. 47, 130; 56, 3.

Amendment of 1880 declared unconstitutional: See sec. 4000, note. Section in force inserted above.

§ 4120. Absence of county officers from state. A county officer shall, in no case, absent himself from the state for a period of more than sixty days, and for no period without the consent of the board of supervisors of his county. En. March 12, 1872. Am'd. 1873-4, 174; 1875-6, 65.

Cal.Rep.Cit. 100, 539; 100, 540.

Absence of judicial officer: Const. Cal., art. VI, sec. 9.

§ 4121. Certain officers prohibited from practicing law, etc. Sheriffs, clerks and constables and their deputies are prohibited from practicing law or acting as attorneys or counselors at law, or having as a partner a lawyer or any one who acts as such. En. March 12, 1872.

§ 4122. Official bonds classified, and amounts thereof. County officers must execute official bonds corresponding to the class of the county of which they are officers, in the following amounts:

First—Sheriffs, first class, sixty thousand dollars; second class, twenty-five thousand dollars; third class, ten thousand dollars.

Second—Clerks, first class, twenty-five thousand dollars; second class, fifteen thousand dollars; third class, six thousand dollars.

Third—Auditors, first class, twenty thousand dollars; second class, ten thousand dollars; third class, two thousand dollars.

Fourth—Treasurers, first class, one hundred thousand dollars; second class, eighty thousand dollars; third class, sixty thousand dollars.

Fifth—Recorders, first class, ten thousand dollars; second class, five thousand dollars; third class, two thousand dollars.

Sixth—District attorneys, first class, fifteen thousand dollars; second class, ten thousand dollars; third class, two thousand dollars.

Seventh—Assessors, first class, twenty thousand dollars; second class, ten thousand dollars; third class, three thousand dollars.

Eighth—Tax collectors, first class, fifty thousand dollars; second class, thirty thousand dollars; third class, fifteen thousand dollars.

Ninth—Surveyors, first class, ten thousand dollars; second class, five thousand dollars; third class, one thousand dollars.

Tenth—School superintendents, first class, five thousand dollars; second class, three thousand dollars; third class, one thousand dollars.

Eleventh—Coroners, first class, five thousand dollars; second class, two thousand dollars; third class, one thousand dollars.

Twelfth—Public administrators, first class, thirty thousand dollars; second class, twenty thousand dollars; third class, ten thousand dollars.

Thirteenth—Supervisors, first class, fifteen thousand dollars; second class, ten thousand dollars; third class, two thousand dollars. En. March 12, 1872. Am'd. 1873-4, 56.

Cal.Rep.Cit. 68, 178.

County officers: Ante, sec. 4103.

Bonds of county and township officers, approval, filing and recording: Ante, sec. 950.

Official bonds, generally: Ante, secs. 947-987.

Class of a county: See ante, sec. 4006.

§ 4123. When amount of bond is not fixed by law. When the amount of the bond to be given by any county or township officer is not fixed by law, the amount must be fixed by the board of supervisors. En. March 12, 1872.

Cal.Rep.Cit. 47, 509.

§ 4124. Other provisions relating to county officers. Other provisions relating to the different classes of officers are contained in chapter VII, title I of part III of this code. En. March 12, 1872.

Different classes of officers, general provisions relating to: Ante, secs. 841-1032.

ARTICLE II.

JUDGE OF SUPERIOR COURT.

§ 4134. Duties of judge of the superior court.

§ 4134. Duties of judge of the superior court. Each judge of the superior court must:

1. Perform the duties of a magistrate;
2. Hold superior courts;
3. Grant certificates to the official character of the county clerk;
4. Certify to the ownership of wrecked property, or its proceeds;
5. Perform such other duties as are prescribed in any of the laws of the state. En. March 12, 1872. Am'd. 1880, 24. Rep. 1880, 101. [See note below.]

Cal.Rep.Cit. 56, 4.

Repealing act of 1880 was declared unconstitutional: See sec. 4000, note. Section in force inserted above.

ARTICLE III.

COUNTY TREASURER.

§ 4144. Duties of county treasurer.
§ 4145. To receive no money, except on certificate of auditor.
§ 4146. Treasurer's and auditor's receipt for money.
§ 4147. Mode of redeeming warrants.
§ 4148. Registry of warrants, when no funds.
§ 4149. Notice of redemption of warrants bearing interest.
§ 4150. Contents of such advertisement.
§ 4151. Priority in payment of warrants.
§ 4152. Action when warrants not re-presented in time.
§ 4153. Treasurer must note the interest paid on warrant.
§ 4154. Monthly and annual settlements with auditor.

§ 4155. Report to board of supervisors each session.
§ 4156. Penalty for not settling or reporting.
§ 4157. When he must sue district attorney.
§ 4158. When he must sue coroner.
§ 4159. Disposition of property received from coroner.
§ 4160. Money thus derived, conditions of repayment.
§ 4161. Treasurer must not part with or loan public money, but may make special deposit.
§ 4162. Supervisors may suspend treasurer.
§ 4163. Delivery of effects of deceased treasurer. No percentage on money received from predecessor.
§ 4164. Books and vouchers subject to inspection.
§ 4165. Treasurer must permit examination of his books, and counting of money in treasury.

§ 4144. Duties of county treasurer. The county treasurer must:

1. Receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, safely keep the same and apply and pay them out, rendering account thereof, as required by law;

2. File and keep the certificates of the auditor delivered to him when moneys are paid into the treasury;

3. Keep an account of the receipt and expenditure of all such moneys, in books provided for the purpose; in which must be entered the amount, the time when, from whom and on what account all moneys were received by him; the amount, time when, to whom and on what account all disbursements were made by him;

4. So keep his books that the amount received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account.

5. Enter no moneys received for the current year on his account with the county for the past fiscal year, until after his annual settlement for the past year has been made with the county auditor;

6. Disburse the county moneys only on county warrants issued by the county auditor, based on orders of the board of supervisors, or as otherwise provided by law. En. March 12, 1872.

Cal.Rep.Cit. 47, 509; 57, 651.

County treasurer, duty to safely keep county clerk's official bond: Ante, sec. 986.

Deputies and clerks of: See post, Appendix, title Treasurers.

Part 4 Title 2

Acts relating to transfer of funds: See post, Appendix, title Treasurers.

§ 4145. To receive no money, except on certificate of auditor. He must receive no money into the treasury unless accompanied by the certificate of the auditor provided for in section 4217. En. March 12, 1872.

Cal.Rep.Cit. 73, 269; 126, 258.

§ 4146. Treasurer's and auditor's receipt for money. When any money is paid to the county treasurer he must give the person paying the same a receipt therefor, which must forthwith be deposited with the county auditor, who must charge the treasurer therewith and give the person paying the same a receipt. En. March 12, 1872.

§ 4147. Mode of redeeming warrants. When a warrant is presented for payment, if there is money in the treasury for that purpose he must pay the same, and write on the face thereof "Paid," the date of payment, and sign his name thereto. En. March 12, 1872.

§ 4148. Registry of warrants, when no funds. When any warrant is presented to the treasurer for payment and the same is not paid for want of funds, the treasurer must indorse thereon, "Not paid for want of funds," annexing the date of presentation and sign his name thereto; and from that time until paid the warrant bears seven per cent per annum interest. En. March 12, 1872.

Registering unpaid warrants: See ante, sec. 4076.

§ 4149. Notice of redemption of warrants bearing interest. When there are sufficient moneys in the treasury to pay the warrants drawing interest, the treasurer must give notice in some newspaper published in his county, or, if none is published, then by written notice posted upon the courthouse door, stating therein that he is ready to pay such warrants. From the first publication or posting of such notice such warrants cease to draw interest. En. March 12, 1872.

Cal.Rep.Cit. 56, 116.

§ 4150. Contents of such advertisement. In advertising warrants under the provisions of this section in any newspaper, the treasurer must not publish the warrants in detail, but give notice only that county warrants pre-

sented for payment prior to such a date, stated in the notice, are payable. When a part only of the warrants presented for payment on the same day are payable, the treasurer must designate such payable warrants in the advertisement. En. March 12, 1872.

§ 4151. Priority in payment of warrants. Warrants drawn on the treasury and properly attested are entitled to preference as to payment out of moneys in the treasury properly applicable to such warrants according to the priority of time in which they were presented. The time of presenting such warrants must be noted by the treasurer, and upon the receipt of moneys into the treasury not otherwise appropriated, he must set apart the same or so much thereof as is necessary for the payment of such warrants. En. March 12, 1872.

Preference according to priority: See ante, sec. 4076.

§ 4152. Action when warrants not re-presented in time. Should such warrants not be re-presented for payment within sixty days from the time of the notice hereinbefore provided for is given, the fund set aside for the payment of the same must be by the treasurer applied to the payment of unpaid warrants next in order of registry. The board of supervisors may, on application and presentation of warrants properly indorsed, which have been advertised, pass an order directing the treasurer to pay them out of any money in the treasury not otherwise appropriated. En. March 12, 1872.

§ 4153. Treasurer must note the interest paid on warrant. When the treasurer pays any warrant on which any interest is due he must note on the warrant the amount of interest paid thereon, and enter on his account the amount of such interest distinct from the principal. En. March 12, 1872.

§ 4154. Monthly and annual settlements with auditor. The treasurer must settle his accounts relating to the collection, care and disbursement of public revenue, of whatsoever nature and kind, with the auditor, on the first Monday of each month. For the purpose of making such settlement he must make out a statement, under oath, of the amount of money or other property received prior to the period of such settlement, the sources whence

the same was derived, the amount of payments or disbursements, and to whom, with the amount remaining on hand. He must, in such settlements, deposit all warrants redeemed by him and take the auditor's receipt therefor. He must also make a full settlement of all accounts with the auditor annually on the first Monday of January, in the presence of the supervisors, who have a supervisory control thereof. En. March 12, 1872.

§ 4155. Report to board of supervisors each session. Each county treasurer must make a detailed report, at every regular meeting of the board of supervisors of his county, of all moneys received by him and the disbursement thereof, and of all debts due to and from the county, and of all other proceedings in his office, so that the receipts into the treasury and the amount of disbursements, together with the debts due to and from the county, may clearly and distinctly appear. En. March 12, 1872.

§ 4156. Penalty for not settling or reporting. If any county treasurer neglects or refuses to settle or report, as required in sections 4154, 4155, he forfeits and must pay to the county the sum of five hundred dollars for every such neglect or refusal, and the board of supervisors must institute suits for the recovery thereof. En. March 12, 1872.

§ 4157. When he must sue district attorney. If the district attorney refuses or neglects to account for and pay over money received by him, as required by the fifth subdivision of section 4256, the county treasurer must bring an action against him for the recovery thereof in the name of the county, and may recover in such action, in addition to the amount so received, fifty per cent thereon by way of damages. En. March 12, 1872.

§ 4158. When he must sue coroner. If the coroner, or any justice of the peace acting as coroner, fails to deliver to the treasurer within thirty days after any inquest upon a dead body, all money and property found upon such body, unless claimed in the mean time by the public administrator or other legal representative of the decedent, as required by section 4287, the treasurer must proceed against the coroner, or justice acting as coroner,

to recover the same by civil action in the name of the county. En. March 12, 1872.

§ 4159. Disposition of property received from coroner. The treasurer, upon receiving from the coroner, or justice acting as coroner, money found on a dead body, must place it to the credit of the county. On receiving other property in like manner, he must within thirty days sell it at public auction upon reasonable public notice, and must in like manner place the proceeds to the credit of the county. En. March 12, 1872.

§ 4160. Money thus derived, conditions of repayment. If the money in the treasury is demanded within six years by the legal representatives of the decedent, the treasurer must pay it to them, after deducting the fees and expenses of the coroner and of the county in relation to the matter; or the same may be so paid at any time thereafter upon the order of the board of supervisors. En. March 12, 1872.

§ 4161. Treasurer must not part with or loan public money, but may make special deposit. The county treasurer must keep all moneys belonging to this state or to any county of this state in his own possession until disbursed according to law. He must not place the same in the possession of any person, to be used for any purpose; nor must he loan or in any manner use or permit any person to use the same, except as provided by law; but nothing in this section prohibits him from making special deposits for the safe-keeping of the public moneys. En. March 12, 1872.

§ 4162. Supervisors may suspend treasurer. Whenever an action based upon official misconduct is commenced against any county treasurer, the supervisors may, in their discretion, suspend him from office until such suit is determined, and may appoint some person to fill the vacancy. En. March 12, 1872.

§ 4163. Delivery of effects of deceased treasurer. No percentage on money received from predecessor. In case of the death of any county treasurer, his legal representatives must deliver up all official moneys, books, accounts, papers and documents which come into their possession.

No percentage must be allowed to the treasurer on any money by him received from his predecessor in office, or from the legal representatives of such predecessors. En. March 12, 1872.

§ 4164. Books and vouchers subject to inspection. The books, accounts and vouchers of the treasurer are at all times subject to the inspection and examination of the board of supervisors and grand jury. En. March 12, 1872.

§ 4165. Treasurer must permit examination of his books, and counting of money in treasury. The treasurer must permit the judge of the superior court and auditor to examine his books and count the money in the treasury whenever they may wish to make an examination or counting. En. March 12, 1872. Am'd. 1880, 24; 1880, 101.

Cal.Rep.Cit. 56, 3.

Amendment of 1880 declared unconstitutional: See sec. 4000, note. Section in force inserted above.

ARTICLE IV.

SHERIFF.

§ 4175. "Process" and "notice" defined.
§ 4176. Duties of sheriff.
§ 4177. Return by mail to another county.
§ 4178. Return prima facie evidence.
§ 4179. Penalty for delaying return.
§ 4180. Liability for refusing to levy or sell.
§ 4181. Damages for refusing to pay over money.
§ 4182. Liability for permitting an escape.
§ 4183. Liability for a rescue.
§ 4184. No action for escape or rescue after return or recapture.
§ 4185. Direction to sheriff must be in writing.
§ 4186. When office of sheriff deemed vacant.
§ 4187. When sheriff justified in executing process.
§ 4188. Officer to exhibit process.
§ 4189. Sheriff to act as crier.
§ 4190. Service on sheriff, how made.
§ 4191. Coroner to execute process when sheriff is a party.
§ 4192. Elisors to act in cases designated.
§ 4193. Other duties of sheriff.

§ 4175. "Process" and "notice" defined. "Process," as used in this article, includes all writs, warrants, summons and orders of courts of justice or judicial officers. "Notice" includes all papers and orders (except process) required to be served in any proceeding before any court,

board or officer, or when required by law to be served independently of such proceeding. En. March 12, 1872.

Cal.Rep.Cit. 92, 247.

§ 4176. Duties of sheriff. The sheriff must:

1. Preserve the peace;

2. Arrest and take before the nearest magistrate, for examination, all persons who attempt to commit or who have committed a public offense;

3. Prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to his knowledge;

4. Attend all courts, except justices', probate and police courts, at their respective terms, held within his county, and obey their lawful orders and directions;

5. Command the aid of as many male inhabitants of his county as he may think necessary in the execution of these duties;

6. Take charge of and keep the county jail and the prisoners therein;

7. Indorse upon all process and notices the year, month, day, hour and minute of reception, and issue therefor to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper and time of reception;

8. Serve all process and notices in the manner prescribed by law;

9. Certify under his hand upon process or notices the manner and time of service, or if he fails to make service, the reasons of his failure, and return the same without delay. En. March 12, 1872.

Cal.Rep.Cit. 59, 493; 65, 190; 77, 47; 92, 247; 97, 242; 110, 31.

Subd. 1. Sheriff is peace officer: Pen. Code, sec. 817.

Subd. 2. Refusal of sheriff to make arrest, punishment for: Pen. Code, sec. 142.

Subd. 4. Probate courts superseded by superior courts after abolition of existing courts by Const. Cal., art. XXII, sec. 3. Abolition of terms: Const. Cal., art. VI, sec. 5.

Obey orders and directions to provide courtrooms, etc.: Code Civ. Proc., sec. 144.

Subd. 7. Process and notices defined: Ante, sec. 4175.

Subd. 8. Summons, service of: Code Civ. Proc., secs. 410 et seq.

Subd. 9. Return of process or notices: Post, secs. 4177-4179.

Act authorizing supervisors to furnish sheriff and deputies with badge: See post, Appendix, title Sheriffs.

§ 4177. Return by mail to another county. When process or notices are returnable to another county, he may inclose such process or notice in an envelope, addressed to the officer from whom the same emanated, and deposit it in the postoffice, prepaying postage. En. March 12, 1872.

§ 4178. Return prima facie evidence. The return of the sheriff, upon process or notices, is prima facie evidence of the facts in such return stated. En. March 12, 1872. Am'd. 1873-4, 57.

Cal.Rep.Cit. 72, 505; 79, 559; 128, 332; 134, 675.

Prima facie evidence defined: Code Civ. Proc., sec. 1833.

§ 4179. Penalty for delaying return. If the sheriff does not return a notice or process in his possession with the necessary indorsement thereon without delay, he is liable to the party aggrieved for the sum of two hundred dollars and for all damages sustained by him. En. March 12, 1872.

Cal.Rep.Cit. 52, 495; 79, 256.

§ 4180. Liability for refusing to levy or sell. If the sheriff to whom a writ of execution is delivered neglects or refuses, after being required by the creditor or his attorney, to levy upon or sell any property of the party charged in the writ which is liable to be levied upon and sold, he is liable to the creditor for the value of such property. En. March 12, 1872.

Cal.Rep.Cit. 52, 495.

Sheriff's duty to execute process: Post, sec. 4187.

Sale without notice, liability of officer for: Code Civ. Proc., sec. 693.

Resale, limit of liability of officer on: Code Civ. Proc., secs. 695, 697.

Indemnity bond may be required by sheriff where property claimed by third person: See Code Civ. Proc., sec. 689.

§ 4181. Damages for refusing to pay over money. If he neglects or refuses to pay over on demand, to the person

entitled thereto, any money which may come into his hands by virtue of his office (after deducting his legal fees), the amount thereof, with twenty-five per cent damages and interest at the rate of ten per cent per month from the time of demand, may be recovered by such person. En. March 12, 1872.

Cal.Rep.Cit. 73, 261; 73, 264.

Not paying over money received by him by virtue of his office, office of sheriff is vacant for, when he remains committed sixty days on account of: Post, sec. 4186.

§ 4182. Liability for permitting an escape. A sheriff who suffers the escape of a person arrested in a civil action, without the consent or connivance of the party in whose behalf the arrest or imprisonment is made, is liable as follows:

1. When the arrest is upon an order to hold to bail or upon a surrender in exoneration of bail before judgment, he is liable to the plaintiff as bail;

2. When the arrest is on an execution or commitment to enforce the payment of money, he is liable for the amount expressed in the execution or commitment;

3. When the arrest is on an execution or commitment other than to enforce the payment of money, he is liable for the actual damages sustained;

4. Upon being sued for damages for an escape or rescue he may introduce evidence in mitigation and exculpation. En. March 12, 1872.

Persons arrested in a civil action in justices' court: Code Civ. Proc., secs. 864, 865. Witness: Code Civ. Proc., sec. 2069.

Escapes of criminal offenders: Pen. Code, secs. 105-110.

Subd. 1. Liability as bail: Code Civ. Proc., sec. 501.

Subd. 3. Commitment or attachment for contempt, detention on: Code Civ. Proc., sec. 1214.

§ 4183. Liability for a rescue. He is liable for a rescue of a person arrested in a civil action, equally as for an escape. En. March 12, 1872.

Liability for rescue: Code Civ. Proc., sec. 501.

Rescue of prisoners: Pen. Code, sec. 101.

§ 4184. No action for escape or rescue after return or recapture. An action cannot be maintained against the

sheriff for a rescue, or for an escape of a person arrested upon an execution or commitment, if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail, or is retaken by the sheriff. En. March 12, 1872.

§ 4185. Direction to sheriff must be in writing. No direction or authority by a party or his attorney to a sheriff, in respect to the execution of process or return thereof, or to any act or omission relating thereto, is available to discharge or excuse the sheriff from a liability for neglect or misconduct, unless it is contained in a writing, signed by the attorney of the party, or by the party if he has no attorney. En. March 12, 1872.

§ 4186. When office of sheriff deemed vacant. When the sheriff is committed under an execution or commitment for not paying over money received by him by virtue of his office, and remains committed for sixty days, his office is vacant. En. March 12, 1872.

Cal.Rep.Cit. 107, 289; 107, 241; 118, 483.

§ 4187. When sheriff justified in executing process. A sheriff or other ministerial officer, is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued. En. March 12, 1872.

Cal.Rep.Cit. 59, 191; 67, 604; 76, 290; 132, 129.

§ 4188. Officer to exhibit process. The officer executing process must then, and at all times subsequent, so long as he retains it, upon request show the same, with all papers attached, to any person interested therein. En. March 12, 1872.

§ 4189. Sheriff to act as crier. The sheriff in attendance upon court must act as the crier thereof, call the parties and witnesses and all other persons bound to appear at the court, and make proclamation of the opening and adjournment of the court, and of any other matter under its direction. En. March 12, 1872.

§ 4190. Service on sheriff, how made. Service of a paper, other than process, upon the sheriff may be made

by delivering it to him or to one of his deputies, or to a person in charge of the office during office hours, or if no such person is there, by leaving it in a conspicuous place in the office. En. March 12, 1872.

§ 4191. Coroner to execute process when sheriff is a party. When the sheriff is a party to an action or proceeding, the process and orders therein, which it would otherwise be the duty of the sheriff to execute, must be executed by the coroner of the county. En. March 12, 1872.

Cal.Rep.Cit. 49, 177; 92, 247.

§ 4192. Elisors to act in cases designated. Process and orders in an action or proceeding may be executed by a person residing in the county, designated by the court or the judge thereof, and denominated an elisor, in the following cases:

1. When the sheriff and coroner are both parties;

2. When either of these officers is a party, and the process is against the other; and

3. When either of these officers is a party, and there is a vacancy in the office of the other; or when it appears by affidavit to the satisfaction of the court in which the proceeding is pending, or the judge thereof, that both of these officers are disqualified, or by reason of any bias, prejudice or other cause, would not act promptly or impartially.

When process is delivered to an elisor, he must execute and return it in the same manner as the sheriff is required to execute similar process. En. March 12, 1872. Am'd. 1880, 24; 1880, 101.

Cal.Rep.Cit. 49, 177; 56, 8; 77, 47; 92, 247; 92, 257; 106, 198; 122, 236; 122, 237.

The amendment of April 27, 1880, was declared unconstitutional: See note to sec. 4000. Its language was similar. Section in force inserted above.

§ 4193. Other duties of sheriff. The sheriff must perform such other duties as are required of him by law. En. March 12, 1872.

Cal.Rep.Cit. 92, 247.

Sheriff, badge of office for himself and deputies to be provided by county boards of supervisors: See post, Appendix, title Sheriffs.

Other duties, sheriff as tax collector: See ante, sec. 4106. Duty as to licenses: See ante, sec. 3387. To summon jurors: Code Civ. Proc., secs. 225-227. To remove intruder on public land: Ante, sec. 42. To serve notice of contest of election of member of legislature: Ante, sec. 276. To serve process of courts-martial: Ante, sec. 2084. To deliver persons to insane asylum: Ante, sec. 2218. To dispose of floating lumber: Ante, sec. 2391. As to wrecked property: Ante, secs. 2403, 2404, 2406, 2407, 2408, 2412, 2415, 2417. To be ex-officio auctioneer, when: Ante, sec. 3291. To attend meetings of board of supervisors: Ante, sec. 4047. To reside at county seat: Ante, sec. 4119. Not to practice law, etc.: Ante, sec. 4121. In criminal cases: See Pen. Code, secs. 1216, 1601, 1602, 1609, 1611.

ARTICLE V.

COUNTY CLERK.

§ 4204. Duties of county clerk.
§ 4205. Other records and duties.

§ 4204. Duties of county clerk. The county clerk must:

1. Take charge of and safely keep or dispose of according to law, all books, papers and records which may be filed or deposited in his office.

2. Act as clerk of the board of supervisors, and as clerk of the district, county and probate courts and attend each term thereof, and upon the judges at chambers when required.

3. Issue all process and notices required to be issued; enter all orders, judgments and decrees proper to be entered; keep in each court a docket, in which must be entered the title of each cause, with the date of its commencement, a memorandum of every subsequent proceeding therein, with the date thereof, and a list of all the fees charged.

4. Keep for the district and county courts, in separate volumes, an index of all suits, labeled "General Index—Plaintiffs," each page of which must be divided into seven columns, under their respective heads, alphabetically arranged as follows: "Number of suit," "Plaintiffs," "Defendants," "Date of judgment," "Number of judgment," "Page of entry of judgment in judgment book," "Page of

minute book of district court"; also an index labeled "General Index—Defendants," each page of which must be divided into seven columns, under their respective heads, alphabetically arranged as follows: "Number of suit," "Defendants," "Plaintiffs," "Date of judgment," "Number of judgment," "Page of entry of judgment in judgment book," "Page in order book of district court." En. March 12, 1872. Am'd. 1880, 102.

Cal.Rep.Cit. 56, 3; 61, 286.

Amendment of 1880 was declared unconstitutional: See sec. 4000, note. Section in force inserted above.

County clerk may issue exempt fire certificates: Ante, sec. 3339. Election for removal of county seat, statement of result must be deposited in office of: Ante, sec. 3983. Bond of: Ante, sec. 4122, subd. 2. To take affidavits of pension claimants without charge: See post, Appendix, title County Clerks.

Subd. 2. Clerk of board of supervisors, county clerk is ex-officio: Ante, sec. 4029.

Clerk of court, as such to certify facts of contest of title to office: Ante, sec. 937. Not to make public divorce and attachment papers, when: Ante, sec. 1032.

§ 4205. Other records and duties. He must keep such other records and perform such other duties as are prescribed by law. En. March 12, 1872.

Other duties of county clerk: Contested elections, in: Ante, secs. 274, 275, 281. Ex-officio sealer of weights and measures, as: Ante, secs. 562-564, 566-567. Official bonds, as to: Ante, secs. 800, 950, 986. Elections, duties as to: Ante, secs. 1094 et seq., 1264-1268, 1284, 1287, 1289, 1293, 1308, 1310. Ex-officio auditor and recorder, when to be: Ante, sec. 4105, subd. 1, sec. 4106, subd. 2. County seat, to keep office open at: Ante, sec. 4116; and to reside there: Ante, sec. 4119. Law, not to practice, etc: Ante, sec. 4121. See further Civil and Penal Codes and Code of Civil Procedure.

Indexing names of aliens making declarations of intention: See General Laws, title Aliens.

Divorce and attachment papers not to be made public: Ante, sec. 1032.

ARTICLE VI.

AUDITOR.

§ 4215. Auditor to draw warrants authorized.
§ 4216. Warrants must specify what.
§ 4217. Settlement with debtors to the county.
§ 4218. To keep accounts, file receipts, etc.
§ 4219. Warrants of auditor to be numbered, marked and registered.
§ 4220. Auditor to examine books of treasurer, when.
§ 4221. Auditor and district attorney to count money in treasury and make statement.
§ 4222. Statements to be filed and posted.
§ 4223. Quarterly statements concerning collection of revenue and and financial condition of county.
§ 4224. Other duties.

§ 4215. Auditor to draw warrants authorized. The auditor must draw warrants on the county treasurer in favor of all persons entitled thereto in payment of all claims and demands chargeable against the county which have been legally examined, allowed, and ordered paid by the board of supervisors; also, for all debts and demands against the county when the amounts are fixed by law, and which are not directed to be audited by some other person or tribunal. En. March 12, 1872.

§ 4216. Warrants must specify what. All warrants must distinctly specify the liability for which they are drawn, and when it accrued. En. March 12, 1872.

Similar provision as to warrants for current expenses: Ante, sec. 4076.

§ 4217. Settlement with debtors to the county. The auditor must examine and settle the accounts of all persons indebted to the county, or holding moneys payable into the county treasury, and must certify the amount to the treasurer, and upon the presentation and filing of the treasurer's receipt therefor give to such person a discharge, and charge the treasurer with the amount received by him. En. March 12, 1872.

Cal.Rep.Cit. 73, 269; 126, 258.

§ 4218. To keep accounts, file receipts, etc. The auditor must keep accounts current with the treasurer, and when any person deposits with the auditor any receipt given by the treasurer for any money paid into the treasury, the auditor must file such receipt and charge the treasurer with the amount thereof. En. March 12, 1872.

§ 4219. Warrants of auditor to be numbered, marked and registered. All warrants issued by the auditor during each year, commencing with the first Monday in January, must be numbered consecutively, and the number, date, and amount of each, and the name of the person to whom payable, and the purpose for which drawn, must be stated thereon, and they must, at the time they are issued, be registered by him. En. March 12, 1872.

§ 4220. Auditor to examine books of treasurer, when. The auditor must, between the first and tenth of each month, examine the books of the treasurer and see that the same have been correctly kept. En. March 12, 1872.

§ 4221. Auditor and district attorney to count money in treasury and make statement. The district attorney and auditor must, at least once in each month, count the money in the county treasury, and make and verify in duplicate statements showing:

1. The amount of money that ought to be in the treasury.
2. The amount and kind of money actually therein. En. March 12, 1872. Am'd. 1880, 24; 1880, 66; 1880, 102.

Cal.Rep.Cit. 56, 3.

Amendment of April 27, 1880, was declared unconstitutional: See sec. 4000, note. Section in force inserted above.

§ 4222. Statements to be filed and posted. They must file one of the statements in the office of the county clerk, and the auditor must post and maintain the other in his office for at least a month thereafter. En. March 12, 1872.

§ 4223. Quarterly statements concerning collection of revenue and financial condition of county. The auditor and treasurer of each county must on the first Monday in February, May, August, and November, make a joint statement to the board of supervisors, showing the whole amount of collections (stating particularly the source of each portion of the revenue) from all sources paid into the county treasury, the funds among which the same was distributed, and the amount to each; the total amount of warrants drawn and paid, and on what fund; total amount of warrants drawn and unpaid, and accounts or claims audited,

or allowed and unpaid, and the fund out of which they are to be paid, and generally make a full and specific showing of the financial condition of the county. En. March 12, 1872.

Cal.Rep.Cit. 126, 623.

§ 4224. Other duties. The auditor must discharge such other duties as are required by law. En. March 12, 1872.

Other duties of auditor, as to licenses: Ante, secs. 3356-3358, 3364. As to taxes: See ante, secs. 3727 et seq. When county clerk is ex-officio auditor and recorder: See ante, secs. 4105, 4106.

ARTICLE VII.

RECORDER.

§ 4234. To procure record books, and have custody of records.
§ 4235. What to be recorded.
§ 4236. Indexes to be kept by recorder.
§ 4237. Records of certificates of sale.
§ 4238. To record decrees of partition, etc.
§ 4239. Filing of copy to impart notice.
§ 4240. Combination of indexes, and arrangement of names therein.
§ 4241. Recorder's duty on receipt of instrument to be recorded.
§ 4242. Indorsing book, etc., when record made, and returning instrument.
§ 4243. Recorder to make searches and furnish certificates thereof.
§ 4244. Liable for neglect of certain duties.
§ 4245. Fees to be prepaid.
§ 4246. Records to be open for inspection.

§ 4234. To procure record books, and have custody of records. The recorder must procure such books for records as the business of his office requires, but orders for the same must first be obtained from the board of supervisors. He has the custody of and must keep all books, records, maps, and papers deposited in his office. En. March 12, 1872.

Recorder, county clerk as ex-officio: Ante, secs. 4105, 4106.

§ 4235. What to be recorded. He must, upon the payment of his fees for the same, record separately, in large and well-bound separate books, in a fair hand: 1905 47

1. Deeds, grants, transfers, and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, and leases which have been acknowledged or proved;

2. Mortgages of personal property;

3. Certificates of marriage and marriage contracts;

4. Wills admitted to probate;

5. Official bonds;

6. Notices of mechanics' liens;

7. Transcripts of judgments which by law of this state, or of the United States, are made liens upon real estate in this state;

8. Notices of attachments upon real estate;

9. Notices of the pendency of an action affecting real estate, the title thereto, or possession thereof;

10. Instruments describing or relating to the separate property of married women;

11. Notices of pre-emption claims;

12. Births and deaths; and,

13. Such other writings as are required or permitted by law to be recorded. En. March 12, 1872. Am'd. 1895, 53.

Cal.Rep.Cit. 98, 412; 135, 177.

Recording transfers: Civ. Code, secs. 1185-1217. What may be recorded: Secs. 1158-1165 of same. Mode of recording: Secs. 1169-1178 of same. Effect of recording, or the want thereof: Secs. 1213-1217 of same.

Mortgages: Civ. Code, sec. 2952. Assignment of: Sec. 2934 of same. Discharge of: Secs. 2938-2941 of same.

Powers of attorneys to execute a mortgage: Civ. Code, sec. 2933.

Proof of acknowledgment of instruments: Civ. Code, secs. 1180-1207.

Mortgages of personal property: Civ. Code, secs. 2959-2964.

Marriage certificates: Civ. Code, secs. 74-77; and contracts: Civ. Code, secs. 179, 180. Register of marriages: See ante, sec. 3079 of this code.

Wills admitted to probate: See Code Civ. Proc., secs. 1318-1322.

Official bonds: Ante, secs. 950, 951.

Mechanics' liens: Code Civ. Proc., sec. 1187.

Judgments affecting real property: Civ. Code, sec. 1159.

Attachment of realty: Code Civ. Proc., sec. 542.

Lis pendens: Code Civ. Proc., sec. 409.

Separate property of married women: Civ. Code, secs. 165, 166.

Pre-emption claims: See Civ. Code, secs. 1158 et seq.

Births and deaths: Secs. 3077, 3079, also sec. 3080.
What may be recorded: Civ. Code, secs. 1158-1165.

§ 4236. Indexes to be kept by recorder. Every recorder must keep:

1. An index of deeds, grants, and transfers, labeled "Grantors," each page divided into four columns, headed respectively: "Names of grantors," "Names of grantees," "Date of deeds, grants, or transfers," and "Where recorded."

2. An index of deeds, labeled "Grantees," each page divided into four columns, headed respectively: "Names of grantees," "Names of grantors," "Date of deeds, grants, or transfers," and "Where recorded."

3. Two indexes of mortgages, labeled respectively: "Mortgagors of real property," "Mortgagors of personal property," with the pages thereof divided into five columns, headed respectively: "Names of mortgagors," "Names of mortgagees," "Date of mortgages," "Where recorded," "When discharged."

4. Two indexes of "Mortgagees," labeled respectively: "Mortgagees of real property," "Mortgagees of personal property," with the pages thereof divided into five columns, headed respectively: "Names of mortgagees," "Names of mortgagors," "Date of mortgages," "Where recorded," "When discharged."

5. Two indexes of releases of mortgages, labeled respectively: "Releases of mortgages of real property—Mortgagors," "Releases of mortgages of personal property—Mortgagors," with the pages thereof divided into six columns, headed respectively: "Parties releasing," "To whom releases are given," "Date of releases," "Where releases are recorded," "Date of mortgages released," "Where mortgages released are recorded."

6. Two indexes of releases of mortgages, labeled respectively: "Releases of mortgages of real property—Mortgagees," "Releases of mortgages of personal property—Mortgagees," with the pages thereof divided into six columns, headed respectively: "Parties whose mortgages are released," "Parties releasing," "Date of releases," "Where recorded," "Date of mortgages released," "Where mortgages released are recorded."

7. An index of powers of attorney, labeled "Powers of

Attorney," each page divided into five columns, headed respectively: "Names of parties executing the powers," "To whom powers are executed," "Date of powers," "Date of recording," "Where powers are recorded."

8. An index of leases, labeled "Leases," each page divided into four columns, headed respectively: "Names of lessors," "Names of lessees," "Date of leases," "When and where recorded."

9. An index of leases, labeled "Lessees," each page divided into four columns, headed respectively: "Names of lessees," "Names of lessors," "Date of leases," "When and where recorded."

10. An index of marriage certificates, labeled "Marriage certificate—Men," each page divided into six columns, headed respectively: "Men married," "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded."

11. An index of marriage certificates, labeled "Marriage certificates—Women," each page divided into six columns, headed respectively: "Women married" (and under this head placing the family names of the women), "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded."

12. An index of assignments of mortgages and leases, labeled "Assignments of mortgages and leases—Assignors," each page divided into five columns, headed respectively: "Assignors," "Assignees," "Instruments assigned," "Date of assignments," "When and where recorded."

13. An index of assignments of mortgages and leases, labeled "Assignments of mortgages and leases—Assignees," each page divided into five columns, headed respectively: "Assignees," "Assignors," "Instruments assigned," "Date of assignments," "When and where recorded."

14. An index of wills, labeled "Wills," each page divided into four columns, headed respectively: "Names of testators," "Date of wills," "Date of probate," "When and where recorded."

15. An index of official bonds, labeled "Official Bonds," each page divided into five columns, headed respectively: "Names of officers," "Names of offices," "Date of bonds," "Amount of bonds," "When and where recorded."

16. An index of notices of mechanics' liens, labeled "Mechanics' Liens," each page divided into three columns, headed respectively: "Parties claiming liens," "Against whom claimed," "Notices when and where recorded."

17. An index to transcripts of judgments, labeled "Transcripts of judgments," each page divided into seven columns, headed respectively: "Judgment debtors," "Judgment creditors," "Amount of judgments," "Where recovered," "When recovered," "When transcript filed," "When judgment satisfied."

18. An index of attachments, labeled "Attachments," each page divided into six columns, headed respectively: "Parties against whom attachments are issued," "Parties issuing attachments," "Notices of attachments," "When recorded," "Where recorded," "When attachments discharged."

19. An index of notices of the pendency of actions, labeled "Notices of Actions," each page divided into three columns, headed respectively: "Parties to the actions," "Notices when recorded," "Where recorded."

20. An index of separate property of married women, labeled "Separate property of married women," each page divided into five columns, headed respectively: "Names of married women," "Names of their husbands," "Nature of instruments recorded," "When recorded," "Where recorded."

21. An index of pre-emption claims, labeled "Pre-emption Claims," each page divided into five columns, headed respectively: "Claimants," "Notices," "When received," "Date of notices," "When and where recorded."

22. An index to the register of births and deaths. En. March 12, 1872.

Cal.Rep.Cit. 109, 182.

§ 4237. Records of certificates of sale. The recorder must keep in his office a book to be called "Certificates of Sale," and record therein all certificates of sale of real estate sold under execution or under order made in any judicial proceeding. He must also prepare an index thereto, in which in separate columns he must enter the names of the plaintiff in the execution, the defendant in the execution, the purchaser at the sale, and the date of the sale. En. March 12, 1872.

Cal.Rep.Cit. 75, 557.

§ 4238. To record decrees of partition, etc. The recorder must file and record with the record of deeds, grants, and transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situate in the county of which he is recorder. En. March 12, 1872.

Recording judgments: See Civ. Code, sec. 1159.

§ 4239. Filing of copy to impart notice. Every such certified copy of partition, from the time of the filing the same with the recorder for record, imparts notice to all persons of the contents thereof; and subsequent purchasers, mortgagees, and lienholders, purchase and take with like notice and effect as if such copy of decree was a duly recorded deed, grant, or transfer. En. March 12, 1872.

§ 4240. Combination of indexes, and arrangement of names therein. The recorder may keep in the same volume any two or more of the indexes mentioned in section 4236, but the several indexes must be kept distinct from each other, and the volume distinctly marked on the outside in such way as to show all the indexes kept therein. The names of the parties in the first column in the several indexes must be arranged in alphabetical order, and when a conveyance is executed by a sheriff, the name of the sheriff and the party charged in the execution must both be inserted in the index, and when an instrument is recorded to which an executor, administrator, or trustee, is a party, the name of such executor, administrator, or trustee, together with the name of the testator or intestate, or party for whom the trust is held, must be inserted in the index. En. March 12, 1872.

§ 4241. Recorder's duty on receipt of instrument to be recorded. When any instrument, paper, or notice, authorized by law to be recorded, is deposited in the recorder's office for record, the recorder must indorse upon the same the time when it was received, noting the year, month, day, hour, and minute of its reception, and must record the same without delay, together with the acknowledgments, proofs, and certificates, written upon or annexed to the same, with the plats, surveys, schedule, and other papers thereto annexed, in the order and as of

the time when the same was received for record, and must note at the foot of the record the exact time of its reception, and the name of the person at whose request it was recorded. En. March 12, 1872.

Cal.Rep.Cit. 57, 401.

§ 4242. Indorsing book, etc., when record made, and returning instrument. He must also indorse upon each instrument, paper, or notice, the time when and the book and pages in which it is recorded, and must thereafter deliver it, upon request, to the party leaving the same for record, or to his order. En. March 12, 1872.

Cal.Rep.Cit. 67, 58; 110, 194.

§ 4243. Recorder to make searches and furnish certificates thereof. The recorder must, upon the application of any person, and upon the payment or tender of the fees therefor, make searches for conveyances, mortgages, and all other instruments, papers, or notices recorded or filed in his office, and furnish a certificate thereof, stating the names of the parties to such instruments, papers, and notices, the dates thereof, the year, month, day, hour, and minute they were recorded or filed, the extent to which they purport to affect the property to which they relate, and the book and pages where they are recorded. En. March 12, 1872.

Payment or tender of fees, essential prerequisite: Post, sec. 4245.

§ 4244. Liable for neglect of certain duties. If any recorder to whom an instrument, proved or acknowledged according to law, or any paper or notice which may by law be recorded, is delivered for record:

1. Neglects or refuses to record such instrument, paper, or notice, within a reasonable time after receiving the same; or,

2. Records any instruments, papers, or notices untruly, or in any other manner than as hereinbefore directed; or,

3. Neglects or refuses to keep in his office such indexes as are required by this article, or to make the proper entries therein; or,

4. Neglects or refuses to make the searches and to give the certificate required by this article; or if such searches or certificate are incomplete and defective in

any important particular affecting the property in respect to which the search is requested; or,

5. Alters, changes, or obliterates any records deposited in his office, or inserts any new matter therein; he is liable to the party aggrieved for three times the amount of the damages which may be occasioned thereby. En. March 12, 1872.

Records: Offenses concerning, by officer having the custody of them: Pen. Code, sec. 113. By any person: Pen. Code, secs. 114, 115, 470, 471.

§ 4245. Fees to be prepaid. He is not bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with his office, until his fees for the same, as prescribed by law, are, if demanded, paid or tendered. En. March 12, 1872.

§ 4246. Records to be open for inspection. All books of record, maps, charts, surveys, and other papers on file in the recorder's office, must, during office hours, be open for the inspection of any person who may desire to inspect them, and may be inspected without charge; and the recorder must arrange the books of record and indexes in his office in such suitable places as to facilitate their inspection. En. March 12, 1872.

New Section 4247-1905-8

ARTICLE VIII.

DISTRICT ATTORNEY.

§ 4256. Duties of district attorney.
§ 4257. Legal adviser of supervisors.
§ 4258. Must not advocate claims against his own county.
§ 4259. Qualifications of district attorney.

§ 4256. Duties of district attorney. The district attorney is the public prosecutor, and must:

1. Attend the district and county courts, and conduct, on behalf of the people, all prosecutions for public offenses;

2. Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that any such offenses have been committed; and for that purpose, when not engaged in criminal proceedings in the district or county court, must attend upon the magistrates in cases

of arrest, when required by them, and attend before and give advice to the grand jury, whenever cases are presented to them for their consideration;

3. Draw all indictments, defend all suits brought against the state or his county, prosecute all recognizances forfeited in the courts of record, and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or his county;

4. Deliver receipts for money or property received in his official capacity, and file duplicates thereof with the county treasurer;

5. On the first Mondays of January, April, July, and October, in each year, file with the Auditor an account, verified by his oath, of all moneys received by him in his official capacity during the preceding three months, and at the same time pay it over to the county treasurer;

6. Give when required, and without fee, his opinion (in writing) to county, district, and township officers, on matters relating to the duties of their respective offices; and,

7. Keep a register of official business, in which must be entered a note of every action, whether criminal, or civil, prosecuted officially, and of the proceedings therein;

8. Perform such other duties as are prescribed by law. En. March 12, 1872. Am'd. 1880, 102.

Cal.Rep.Cit. 56, 3; 61, 253; 74, 476; 109, 518. Subd. 2—47, 479. Subd. 3—68, 410; 67, 253; 72, 523. Subd. 4—67, 253.

Amendment of 1880 was held unconstitutional: See sec. 4000, note. Section in force inserted above.

Fees and salaries of district attorneys: See sec. 4330, post.

Assignments to: See post, Appendix, title District Attorneys.

§ 4257. Legal adviser of supervisors. The district attorney is the legal adviser of the board of supervisors. He must attend their meetings when required, and must attend and oppose all claims and accounts against the county when he deems them unjust or illegal. En. March 12, 1872.

Cal.Rep.Cit. 74, 476; 116, 621.

§ 4258. Must not advocate claims against his own county. The district attorney, except for his own services,

must not present any claim, account, or demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another. En. March 12, 1872.

Cal.Rep.Cit. 74, 476.

§ 4259. **Qualifications of district attorney.** No person shall hold the office of district attorney who has not been admitted by the superior court of this state to practice as an attorney and counselor at law. En. Stats, 1891, 287.

ARTICLE IX.

SURVEYOR.

§ 4268. County surveyor to make surveys, keep record, furnish copies, etc.
§ 4269. Surveys of lands in two counties.
§ 4270. Order for survey where title to lands in two counties disputed.
§ 4271. Courses to be run by true meridian; variation noted.
§ 4272. Surveyor to employ assistants, when.
§ 4273. Surveyor to transmit to surveyor-general plats and field notes, and give information.
§ 4274. To assist surveyor-general, when.
§ 4275. Disinterested person, when to act in place of county surveyor.

§ 4268. **County surveyor to make surveys, keep record, furnish copies, etc.** The surveyor must make any survey that may be required, by the order of court, or upon application of any person, keep a correct and fair record of all surveys made by him, number them in the order made progressively, and preserve a copy of the field notes and calculations of each survey, indorse thereon its proper number, a copy of which, and a fair and accurate plat, together with the certificate of survey, must be furnished by him to any person upon payment of the fees allowed by law. En. March 12, 1872.

Order of court for survey: See post, sec. 4270.

§ 4269. **Surveys of lands in two counties.** Any person owning or claiming lands which are divided by county lines, and wishing to have the same surveyed, may apply to the surveyor of any county in which any part of such land is situated, and on such application being made the surveyor must make the survey, which is as valid as though the lands were situated entirely within the county. En. March 12, 1872.

§ 4270. Order for survey where title to lands in two counties disputed. When land, the title to which is in dispute before any court, is divided by a county line, the court making an order of survey may direct the order to the surveyor of any county in which any part of the land is situated. En. March 12, 1872.

§ 4271. Courses to be run by true meridian; variation noted. In all surveys the courses must be expressed according to the true meridian, and the variation of the magnetic meridian from the true meridian must be expressed on the plat, with the date of the survey. En. March 12, 1872.

§ 4272. Surveyor to employ assistants, when. If a party for whom a survey is made does not furnish the chainmen and markers, the surveyor may employ the necessary chainmen and markers, and receive the reasonable hire of all assistance necessarily employed. En. March 12, 1872.

§ 4273. Surveyor to transmit to surveyor-general plats and field notes, and give information. Each county surveyor, immediately after making any survey, except surveys of city or town lots, must make out a copy of the field notes and plat, and transmit the same to the surveyor-general, indicating plainly upon the plat at what point of any line any river or stream or county line is touched or crossed. He must communicate to the surveyor-general such information concerning surveys made by him, and other matters connected with the duties of his office, as may be required. En. March 12, 1872.

§ 4274. To assist surveyor-general, when. Each county surveyor must, when required, aid and assist the surveyor-general in making surveys within the county. En. March 12, 1872.

§ 4275. Disinterested person, when to act in place of county surveyor. When the county surveyor is interested in any land, the title to which is in dispute and a survey thereof is necessary, the court must direct the survey to be made by some disinterested person, and the person so appointed is for that purpose authorized to administer and certify oaths. He must return such survey, verified by

his affidavit annexed thereto, and receive for his services the same fees as the county surveyor would be entitled to for similar services. En. March 12, 1872.

ARTICLE X.

CORONER.

§ 4285. Coroner to hold inquest.
§ 4286. Coroner to bury body, when; expenses of interment.
§ 4287. To deliver to county treasurer, etc., property found on body.
§ 4288. Statement before auditing accounts of coroner.
§ 4289. Justice of peace to act as coroner in certain cases.
§ 4290. Coroner to discharge duties of sheriff, when.
§ 4291. No section.
§ 4292. Coroner may subpœna physician or chemist.

§ 4285. Coroner to hold inquest. The coroner must hold inquests as prescribed in chapter II, title XII, part II of the Penal Code. En. March 12, 1872.

Coroner's inquests and duties of coroners: See Pen. Code, secs. 1510-1519.

§ 4286. Coroner to bury body, when; expenses of interment. When an inquest is held by the coroner, and no other person takes charge of the body of the deceased, he must cause it to be decently interred; and if there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of the burial, the expenses are a legal charge against the county. En. March 12, 1872.

§ 4287. To deliver to county treasurer, etc., property found on body. The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer or the legal representatives of the deceased any money or other property found upon the body. En. March 12, 1872.

§ 4288. Statement before auditing accounts of coroner. Before auditing or allowing the accounts of the coroner, the supervisors must require him to file with the clerk of the board a statement in writing, verified by his affidavit, showing:

1. The amount of money or other property belonging to the estate of the deceased person which has come into his possession since his last statement.

2. The disposition made of such property. En. March 12, 1872.

§ 4289. Justice of peace to act as coroner in certain cases. If the office of coroner is vacant, or he is absent or unable to attend, the duties of his office may be discharged by any justice of the peace of the county, with the like authority and subject to the same obligations and penalties as the coroner. En. March 12, 1872.

§ 4290. Coroner to discharge duties of sheriff, when. In the cases specified in article IV of this chapter, the coroner must discharge the duties of sheriff. En. March 12, 1872.

Coroner as sheriff: Ante, sec. 4191.

§ 4291. [No section.]

§ 4292. Coroner may subpœna physician or chemist. The coroner, or other officer holding an inquest upon the body of a deceased person, may subpœna a physician or surgeon to inspect the body, or a chemist to make an analysis of the contents of the stomach or the tissues of the body of the deceased, and to give a professional opinion as to the cause of the death. Any physician, surgeon, or chemist professionally attending as a witness on an inquest, or upon a trial of any person charged with murder or manslaughter, or in cases of inquiry into the lunacy or insanity of any person, as above provided, shall be allowed a reasonable compensation for such attendance or examination by the board of supervisors, upon the written certificate of the court or officer requiring such services, as to the extent and value of the same; but such certificate shall not be conclusive as to the amount of compensation. En. Stats. 1880, 103.

Cal.Rep.Cit. 56, 4.

Amendment of 1880 which added this section was declared unconstitutional; see section 4000, note.

ARTICLE XI.

ASSESSORS, TAX COLLECTORS, SCHOOL SUPERINTENDENTS, PUBLIC ADMINISTRATORS, AND COMMISSIONER OF HIGHWAYS.

§ 4300. Duties of assessor.
§ 4301. Duties of tax collector.
§ 4302. Duties of school superintendents.
§ 4303. Duties of public administrator.
§ 4304. Duties of commissioner of highways and road overseers.

§ 4300. Duties of assessor. The assessor must perform such duties as are prescribed in title IX, part III of this code. En. March 12, 1872.

Duties of assessor : See ante, secs. 3627,-3663, 3820-3831, 3839-3862.

§ 4301. Duties of tax collector. The tax collector must perform such duties as are prescribed in title IX, part III of this code. En. March 12, 1872.

Cal.Rep.Cit. 112, 71; 112, 72.

Duties of tax collector: See ante, secs. 3746-3810.

Tax collector generally: Ante, sec. 3746.

§ 4302. Duties of school superintendents. The school superintendent must perform such duties as are prescribed in title III, part III of this code. En. March 12, 1872.

Duties of school superintendent: Ante, sec. 1532, 1543-1553.

§ 4303. Duties of public administrator. The public administrator must perform such duties as are prescribed in chapter XIII, title XI, part III of the Code of Civil Procedure. En. March 12, 1872.

Public administrator: See Code Civ. Proc., secs. 1726-1744.

§ 4304. Duties of commissioner of highways and road overseers. The commissioner of highways and road overseers must perform such duties as are prescribed in title VI, part III, of this code. En. March 12, 1872. Rep. 1880, 103. [See note below.]

Cal.Rep.Cit. 56, 4.

Repealing act of 1880 was declared unconstitutional: See sec. 4000, note. Section in force inserted above.

Public ways: See ante, secs. 2348-2948.

ARTICLE XII.

CONSTABLES, JUSTICES OF THE PEACE, AND INFERIOR OFFICERS.

§ 4314. Constables to attend justices' courts.
§ 4315. Governed by the law prescribing sheriff's duties.
§ 4316. Duties of justices of the peace.

§ 4314. Constables to attend justices' courts. Constables must attend the courts of justices of the peace within

their townships whenever so required, and within their counties execute, serve, and return all process and notices directed or delivered to them by a justice of the peace of such county or by any competent authority. En. March 12, 1872. Am'd. 1880, 103.

Cal.Rep.Cit. 56, 4.

Amendment of 1880 was declared unconstitutional: See sec. 4000, note. Section in force inserted above.

Constable, deputies, may appoint: See ante, secs. 876, 877.

Justices' courts: See Code Civ. Proc., secs. 85-115, 832-926.

§ 4315. Governed by the law prescribing sheriff's duties. All the provisions of article IV of this chapter, except the fourth and sixth subdivisions of section 4176, apply to constables and govern their powers, duties and liabilities. En. March 12, 1872.

Cal.Rep.Cit. 59, 493.

Provisions applicable: See ante, secs. 4175-4193.

§ 4316. Duties of justices of the peace. Justices of the peace must perform such duties as are prescribed in title XI, part II, of the Code of Civil Procedure, and such other duties as are prescribed by law. En. March 12, 1872.

Cal.Rep.Cit. 88, 410.

Justices of the peace and justices' courts in general: Code Civ. Proc., secs. 110-115. Proceedings in justices' court: Code Civ. Proc., secs. 832-926.

CHAPTER IV.

SALARIES AND FEES OF OFFICE.

§ 4328. Salaries of county judges and district attorneys.
§ 4329. Salary of county judges fixed.
§ 4330. Salary of district attorneys fixed.
§ 4331. Continuing acts fixing salaries and fees of county officers.
§ 4332. Officers not to perform service unless fees are paid.
§ 4333. No charge to be made in proceedings on habeas corpus.
§ 4334. Fees to be paid to treasurer.

§ 4328. Salaries of county judges and district attorneys. The salaries of county judges and district attorneys must be paid monthly from the county treasury, on the warrants of the county auditor. Their salaries are fixed in

the succeeding sections of this chapter. En. March 12, 1872. Am'd. 1880, 104.

Cal.Rep.Cit. 56, 4.

Amendment of 1880 was declared unconstitutional: See sec. 4000, note. Section in force inserted above.

§ 4329. Salary of county judges fixed. (Repealed.) En. March 12, 1872. Am'd. 1880, 104. Rep. 1880, 1.

Cal.Rep.Cit. 56, 4.

Amendment of 1880, 104, was declared unconstitutional: See sec. 4000, note.

The section formerly in force was as follows:

The salaries of county judges are as follows:

1. Of San Francisco, five thousand dollars;

2. Of Sacramento, three thousand dollars;

3. Of Alameda, twenty-five hundred dollars;

4. Of Nevada and Yuba, twenty-four hundred dollars;

5. Of Amador, Los Angeles, Napa, Placer, San Joaquin, Santa Clara, Solano, and Sonoma, two thousand dollars;

6. Of Butte, Colusa, Contra Costa, El Dorado, Marin, Mendocino, Merced, Siskiyou, Stanislaus, Sutter, Tehama, and Yolo, fifteen hundred dollars;

7. Of Calaveras, Fresno, Humboldt, Kern, Mariposa, Monterey, Plumas, San Luis Obispo, Santa Barbara, Santa Cruz, Shasta, Sierra, and Tuolumne, twelve hundred dollars;

8. Of Alpine, Klamath, Lake, Lassen, San Diego, San Mateo, Trinity, and Tulare, one thousand dollars; and,

9. Of Del Norte, Inyo, Mono, and San Bernardino, eight hundred dollars.

Salaries of judges: The constitution of California makes provision for the amount of the salary of a judge, and thereby supersedes this section: Const. Cal., art. VI, sec. 17.

For such salaries: See ante, secs. 737, 738.

§ 4330. Salary of district attorneys fixed. The annual salaries of district attorneys are as follows:

First—Of San Francisco, five thousand dollars;

Second—Of Sacramento, thirty-six hundred dollars.

Third—Of Los Angeles, three thousand dollars.

Fourth—Of San Joaquin, Santa Clara and Alameda, twenty-five hundred dollars.

Fifth—Of Butte, seventeen hundred dollars.

Sixth—Of Nevada, two thousand dollars; and of Colusa, eighteen hundred dollars.

Seventh—Of Sonoma, eighteen hundred dollars.

Eighth—Of El Dorado, Placer, Amador, Marin, Contra Costa, Tuolumne, Napa, Yolo, Yuba, and Santa Cruz, fifteen hundred dollars.

Ninth—Of Mariposa, Merced, San Mateo, Shasta, Siskiyou, Stanislaus, Tehama, Fresno, Kern, Mendocino, San Luis Obispo, Santa Barbara, Tulare, San Diego, and Plumas, twelve hundred dollars.

Tenth—Of Monterey, Sutter, Trinity, Sierra, and Calaveras, one thousand dollars.

Eleventh—Of Inyo, and Lassen, eight hundred dollars.

Twelfth—Of Del Norte, Humboldt, Klamath, Lake, and San Bernardino, seven hundred dollars.

Thirteenth—Of Alpine, six hundred dollars.

Fourteenth—Of Mono, five hundred dollars. En. March 12, 1872. Am'd. 1871-2, 653.

Cal.Rep.Cit. 45, 49.

§ 4331. Continuing acts fixing salaries and fees of county officers. Nothing in this code not contained in this chapter affects any of the provisions of the statutes relating to the compensation, salaries, or fees of county or township officers; but all such statutes are recognized as continuing in force, notwithstanding the provisions of this code, except so far as they are affected by or are inconsistent with the provisions of this chapter. En. March 12, 1872.

Cal.Rep.Cit. 50, 118.

§ 4332. Officer not to perform service unless fees are paid. The officers mentioned in this title are not in any case, except for the state or county, to perform any official services, unless upon the prepayment of the fees prescribed for such services, except as in the succeeding section provided by law; and on such payment the officer must perform the services required. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond. En. March 12, 1872.

Cal.Rep.Cit. 57, 506.

§ 4333. No charge to be made in proceedings on habeas corpus. No fee or compensation of any kind must be

charged or received by any officer for duties performed or services rendered in proceedings upon habeas corpus. En. March 12, 1872.

§ 4334. Fees to be paid to treasurer. In all cases in which any provision of law authorizes an officer who receives a salary to perform an official act, and he performs such act, all fees chargeable for the performance of such act shall be collected by him and paid over to the treasurer or other officer authorized by law to receive the same. En. Stats. 1891, 67.

Cal.Rep.Cit. 104, 66.

CHAPTER V.

OTHER COUNTY CHARGES.

§ 4343. County charges to be audited.
§ 4344. Enumeration of county charges.
§ 4345. Costs on removal of criminal actions.
§ 4346. Proceedings in collection of such costs.
§ 4347. Actions to which such provisions apply.
§ 4348. Officers entitled to fees. Compensation of supervisors.

§ 4343. County charges to be audited. Accounts for county charges of every description must be presented to the board of supervisors to be audited, as prescribed in article III, [chapter II] title II, part IV, of this code. En. March 12, 1872.

Presenting accounts for county charges to be audited: See article III of chapter II, and especially ante, secs. 4072-4074.

§ 4344. Enumeration of county charges. The following are county charges:

1. Charges incurred against the county by virtue of any provision of this title;

2. The compensation of the district attorney, and all expenses necessarily incurred by him in criminal cases arising within the county;

3. The compensation allowed by law to sheriffs and constables for executing process on persons charged with criminal offenses; for services and expenses in conveying criminals to jail; for service of subpœnas issued by district attorneys, and for other services in relation to criminal proceedings for which no specific compensation is prescribed by law;

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4. The expenses necessarily incurred in the support of persons charged with or convicted of crimes and committed therefor to the county jail;

5. The sums required by law to be paid to grand jurors and indigent witnesses in criminal cases;

6. The accounts of the coroner of the county for such services as are not provided to be paid otherwise;

7. All charges and accounts for services rendered by any justice of the peace for services in the examination of persons charged with crime not otherwise provided for by law;

8. The necessary expenses incurred in the support of county hospitals, and the indigent sick and the otherwise dependent poor whose support is chargeable to the county;

9. The contingent expenses necessarily incurred for the use and benefit of the county;

10. Every other sum directed by law to be raised for any county purpose under the direction of the board of supervisors, or declared to be a county charge;

11. The salary of the commissioner of highways must be paid at the close of each quarter. En. March 12, 1872. Am'd. 1880, 104.

Cal.Rep.Cit. 56, 4; 67, 336.

Amendment of 1880 declared unconstitutional: See note to sec. 4000. Section in force inserted above.

§ 4345. Costs on removal of criminal actions. When a criminal action is removed before trial, the costs accruing upon such removal and trial shall be a charge against the county in which the indictment was found. En. Stats. 1873-4, 175.

§ 4346. Proceedings in collection of such costs. The clerk of the county to which such action is removed shall certify the amount of costs allowed and certified by the court to the auditor of his county, and such auditor shall audit the same and draw his warrants therefor upon the treasurer of the county from which such action was removed, and such auditor shall forward to said treasurer and auditor of the county from which said action was transferred as aforesaid, a certified copy of the total amount of costs allowed by the court, giving each item as certified to him by the county clerk and the court; and the

auditor receiving such certified copy of said costs allowed, shall enter the same in his books as a charge against the treasurer of his county, and the county treasurer of the county from which such action was removed must immediately upon presentation pay said warrant out of the general fund of said county; or if at the time of presentation there is not sufficient moneys in the said general fund to pay the same, he must indorse upon said warrant, "Not paid for want of funds," and said warrant must be registered, and shall draw interest at the same rate and be paid in the same manner as though it had been drawn by the auditor of the county where the indictment was found. En. Stats. 1873-4, 175.

§ 4347. Actions to which such provisions apply. Sections four thousand three hundred and forty-five and four thousand three hundred and forty-six of this code shall apply to all criminal actions which have been or may be removed for trial since the first day of January, eighteen hundred and seventy-three. En. Stats. 1873-4, 176.

§ 4348. Officers entitled to fees. Compensation of supervisors. The county surveyor, coroner, and justices of the peace, and constables, receive fees and commissions which are prescribed by law, which fees and commissions shall be in full payment for all services rendered by them. Each member of the board of supervisors shall receive five dollars a day for each day necessarily employed in attending the sessions of the board, and twenty cents a mile in traveling to and from his residence to the county seat; provided, that no charge shall be made for more than one trip at term of the board; and provided further, that such per diem and mileage shall not exceed in the aggregate the sum of eight hundred dollars per annum for any one of such supervisors. En. Stats. 1880, 104.

Cal.Rep.Cit. 56, 4.

Amendment of 1880, by which this section was added, was declared unconstitutional: See ante, sec. 4000, note.

Part 4

TITLE III.

THE GOVERNMENT OF CITIES.

Chapter I. Cities as Bodies Corporate, §§ 4354-4374.
II. Executive Powers, §§ 4385-4393.
III. Legislative Powers, §§ 4403-4414.
IV. Judicial Powers, §§ 4424-4432.
V. Certain Statutes Relating to Cities and Towns and Existing Corporations Continued. §§ 4442.
VI. Funding and Refunding of City Indebtedness. §§ 4445-4449.

CHAPTER I.

CITIES AS BODIES CORPORATE.

§ 4354. City is body politic and corporate; powers.
§ 4355. Distribution of powers.
§ 4356. City declared by legislature.
§ 4357. Boundaries, how changed.
§ 4358. Petition to supervisors. (Repealed.)
§ 4359. Undertaking for expenses of election. (Repealed.)
§ 4360. Supervisors to order an election. (Repealed.)
§ 4361. Notice of election, etc. (Repealed.)
§ 4362. Ordinance approving such annexation. (Repealed.)
§ 4363. Order of supervisors, etc. (Repealed.)
§ 4364. Expenses of election, how paid. (Repealed.)
§ 4365. Certified copies of ordinance to be transmitted and filed. (Repealed.)
§ 4366. Act to fix time of the first election.
§ 4367. Notice of election and canvass of returns.
§ 4368. Who are entitled to vote at city elections.
§ 4369. Common council to provide for election and appointment of city officers.
§ 4370. Elective officers of cities.
§ 4371. Direct taxes limited.
§ 4372. Condemnation of private property for city use.
§ 4373. Vacancies in office.
§ 4374. Official oaths and bonds.

§ 4354. City is body politic and corporate; powers. A city is a body politic and corporate, with the general powers of a corporation, and the powers specified or necessarily implied in this title or in special laws. En. March 12, 1872.

City, what constitutes: Post, sec. 4356.

Municipal corporation act: See General Laws, title Municipal Corporations.

4355. Distribution of powers. Every city has legislative, executive, and judicial power. Its legislative power

is vested in a common council; its executive power in a mayor, and his subordinate officers; and its judicial power in a police court. En. March 12, 1872.

Cal.Rep.Cit. 62, 557; 66, 4.

§ 4356. City declared by legislature. Every subdivision of a county not exceeding in extent six square miles, with not less than two thousand inhabitants, with its metes and bounds fixed and defined, and declared by act of the legislature to be a "municipal corporation," is a city with the powers conferred by this title. En. March 12, 1872.

Cal.Rep.Cit. 112, 326.

Powers of supervisors: See ante, sec. 4046.

Liability for riots: See post, sec. 4452.

Classification of cities, acts relating to: See General Laws, title Municipal Corporations.

§ 4357. Boundaries, how changed. The boundary of a city may be changed by an act of the legislature, on petition of a majority of the common council, presented in pursuance of a city ordinance, or, as hereinafter provided, by the board of supervisors. En. March 12, 1872.

Acts relative to changing boundaries of cities: See General Laws, title Municipal Corporations.

§ 4358. Petition to supervisors. (Repealed.) En. March 12, 1872. Rep. 1873-4, 177.

§ 4359. Undertaking for expenses of election. (Repealed.) En. March 12, 1872. Rep. 1873-4, 177.

§ 4360. Supervisors to order an election. (Rpealed.) En. March 12, 1872. Rep. 1873-4, 177.

§ 4361. Notice of election, etc. (Repealed.) En. March 12, 1872. Rep. 1873-4, 177.

§ 4362. Ordinance approving such annexation. (Repealed.) En. March 12, 1872. Rep. 1873-4, 177.

§ 4363. Order of supervisors, etc. (Repealed.) En. March 12, 1872. Rep. 1873-4, 177.

§ 4364. Expenses of election, how paid. (Repealed.) En. March 12, 1872. Rep. 1873-4, 177.

§ 4365. Certified copies of ordinance to be transmitted and filed. (Repealed.) En. March 12, 1872. Rep. 1873-4, 177.

§ 4366. Act to fix time of the first election. The act of the legislature declaring a city to be a "municipal corporation" must fix a day for the first election of city officers, and fix the number of members of the "common council" to be elected for the first year. En. March 12, 1872.

Act validating incorporation of cities: See General Laws, title Municipal Corporations.

§ 4367. Notice of election and canvass of returns. Notice of the first election of city officers must be given by the county judge of the county, by publishing the same in a newspaper published in the city for four weeks successively, designating the officers to be elected, the polling-places, and the officers of election. The returns must be made to the county judge, who must count and declare the vote, and issue certificates of election. En. March 12, 1872.

§ 4368. Who are entitled to vote at city elections. The qualified electors of the city who have resided within the city limits for thirty days next preceding the election are qualified to vote at all city elections. En. March 12, 1872.

§ 4369. Common council to provide for election and appointment of city officers. The common council must, during the first year, by ordinance, fix the term of office of all elective officers and the time when they must be elected, and provide for the appointment of other necessary officers, including city clerk, city attorney, and treasurer, and fix their terms and amount of their bonds. En. March 12, 1872. Am'd. 1873-4, 57.

Cal.Rep.Cit. 109, 508; 109, 511.

§ 4370. Elective officers of cities. The elective officers of cities are: A mayor, a marshal, a police judge, assessor and collector of taxes, and a common council consisting of not less than three members. They must be electors of the city, and qualify by taking the statutory oath of office, and, except the first officers elected, hold office for a term to be fixed by the common council, not exceeding two years. En. March 12, 1872. Amd. 1873-4, 58.

Cal.Rep.Cit. 62, 557; 66, 4.

§ 4371. Direct taxes limited. The direct taxes imposed by the common council in any one year must not exceed

two per centum of the valuation of property within the city. En. March 12, 1872.

Cal.Rep.Cit. 95, 383; 95, 384.

§ 4372. **Condemnation of private property for city use.** Whenever it becomes necessary for the city to take private property for the purposes of laying out or altering streets or alleys, and the council cannot agree with the owner thereof as to the price to be paid, the council may direct proceedings to be taken under title VII, part III of the Code of Civil Procedure, to procure the same. En. March 12, 1872.

Cal.Rep.Cit. 90, 617.

Eminent domain: Code Civ. Proc., secs. 1237-1263.

§ 4373. **Vacancies in office.** If any person elected to a city office removes from the city, absents himself for more than thirty days without leave from the council, or fails to qualify within ten days after election, his office is vacant. En. March 12, 1872.

§ 4374. **Official oaths and bonds.** All city officers, before entering upon their duties, must take the oath of office. The marshal, attorney, clerk, assessor, collector, and treasurer must also give a bond, with sureties to be approved by the mayor, payable to the corporation by its corporate name, in such penalty as may be prescribed by ordinance, conditioned for the faithful performance of the duties of their office; and a like bond may be required of any officer whose office is created by an ordinance. Should the bond of any city officer become insufficient, he may be required to give additional bond, and, upon his failure so to do, his office must be deemed vacant. En. March 12, 1872. Am'd. 1873-4, 58.

Cal.Rep.Cit. 109, 508.

CHAPTER II.

EXECUTIVE POWERS.

§ 4385. Executive officers of a city.
§ 4386. Powers of mayor.
§ 4387. Accounts and demands, how audited and paid.
§ 4388. Mayor president of the common council.
§ 4389. Duties of city marshal.
§ 4390. Duties of assessor.
§ 4391. Duties of city attorney.
§ 4392. Duties of treasurer.
§ 4393. Duties of clerk.

§ 4385. Executive officers of a city. The executive officers of a city are the mayor, marshal, and such officers for the assessment, collection, auditing, safe-keeping, and disbursing the revenue and keeping the records and journals of the city, as the common council may provide. En. March 12, 1872.

§ 4386. Powers of mayor. The mayor has power:

1. To nominate, and with the consent of the common council, to appoint all non-elective officers of the city provided for by the common council, including city attorney, secretary of the council, and city treasurer;

2. To suspend, and with the consent of the common council, to remove any non-elected officer, stating in the suspension or removal the cause thereof;

3. To cause the ordinances of the city to be executed, and to supervise the discharge of official duty by all subordinate officers;

4. To communicate to the common council, at the beginning of every session, and oftener if deemed necessary, a statement of the affairs of the city, with such recommendations as he may deem proper;

5. To recommend to the common council such measures connected with the public health, cleanliness, and ornament of the city, and the improvement of the government and finances, as he deems expedient;

6. To approve all ordinances of the common council adopted by it, and in case the same do not meet his approbation, to return the same, with his objections, within five days after he receives the same. En. March 12, 1872. Am'd. 1873-4, 59.

Cal.Rep.Cit. 109, 508.

§ 4387. Accounts and demands, how audited and paid. All accounts and demands against said city must be audited by the president of the common council, and no money must be drawn from the city treasury unless upon the certificate of the president, by order of the council. The certificate must be drawn upon the treasurer of the city, and must specify the fund out of which the same is payable. The treasurer must pay the same out of any money in his hands belonging to such fund. En. March 12, 1872.

§ 4388. Mayor president of the common council. The mayor is the president of the common council, must sign the journals thereof, decide by his voice all tie votes, must sign the warrants on the city treasurer, and is the keeper of the city seal. En. March 12, 1872.

§ 4389. Duties of city marshal. The city marshal, in addition to the duties prescribed by the common council, must execute and return all process issued by the police judge, or directed to him by any legal authority, and attend upon the police court regularly. He may appoint one or more deputies; and must arrest all persons guilty of a breach of the peace or for the violation of any city ordinance, and bring them before the police judge for trial, and has superintending control over the city police; and, until otherwise provided by ordinance, must perform all duties of collector of city taxes. En. March 12, 1872.

Cal.Rep.Cit. 121, 549.

Police judge and court: Post, secs. 4424 et seq.

§ 4390. Duties of assessor. The assessor, in addition to the duties prescribed by the common council, must make out, within such time as the common council orders, a correct list of all the taxable property within the city limits, with the valuation thereof, which list, certified by him, must be returned to the common council. The mode of making out the list and of ascertaining the value of property, and of collecting all taxes, is the same as prescribed in this code for assessing and collecting the state tax. En. March 12, 1872.

§ 4391. Duties of city attorney. The city attorney must attend to all suits, matters, and things in which the city may be legally interested; to give his advice or opinion in writing whenever required by the mayor or common council, and do and perform all such things touching his office as by the common council may be required of him. En. March 12, 1872.

Cal.Rep.Cit. 109, 509; 109, 511.

Assistants to: See post, Appendix, title City and County Attorneys.

§ 4392. Duties of treasurer. The treasurer must receive all moneys that come to the city, either from taxation or

otherwise, and pay the same out on the certificate of the president of the common council, and do and perform all other acts as are prescribed for him by the common council. He must, on the first days of January, April, July, and October of each year, make out and present to the mayor a full and complete statement of the receipts and expenditures of the preceding three months, which statement the mayor must cause to be published. En. March 12, 1872.

§ 4393. Duties of clerk. The city clerk is clerk of the common council; must keep the journal of their proceedings and all records of the city; he must keep the accounts of the city, and countersign all warrants on the city treasurer; keep a true account thereof and of the financial condition of the city, and do such other things as the common council may by ordinance provide. En. March 12, 1872.

CHAPTER III.

LEGISLATIVE POWERS.

§ 4403. Common council, how constituted.
§ 4404. Wards, boundaries and number of.
§ 4405. First meeting, for organization.
§ 4406. Quorum.
§ 4407. Control over members. Rules, journals and publicity of proceedings.
§ 4408. Additional powers of common council.
§ 4409. Street improvements, how made.
§ 4410. To grant authority to gas and water companies.
§ 4411. Reservations by cities.
§ 4412. Contract for gas and water.
§ 4413. Restrictions and conditions to be imposed.
§ 4414. Ordinance, how voted, and how passed over veto.

§ 4403. Common council, how constituted. The common council consists of not less than three citizens of the city, elected one from each of the wards. The mayor is the presiding officer thereof. En. March 12, 1872.

Act prohibiting solicitation or influencing of supervisor: See post, Appendix, title Officers.

§ 4404. Wards, boundaries and number of. The common council has power to divide the city into a convenient number of wards, fix the boundaries thereto, and may change the same from time to time as they see fit, having regard to the number of white male inhabitants, so that

each ward contains as near as may be the same number of inhabitants. The number of wards of any city must not exceed the number of councilmen to which the city is entitled; and when a city has been so divided, the councilmen must be elected from the several wards respectively, according to the number of inhabitants. En. March 12, 1872.

§ 4405. First meeting, for organization. The members of the common council must assemble within five days after their election, and choose some suitable person as clerk. In case of the absence of the mayor they may elect a president pro tempore, who has all the powers and must perform all the duties of president. They must, by ordinance, fix the times and places of holding their stated meetings, and may be convened by the mayor at any time. En. March 12, 1872.

§ 4406. Quorum. A majority of the members of the common council constitutes a quorum to do business; but a less number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as the council may, by ordinance, prescribe. En. March 12, 1872.

§ 4407. Control over members. Rules, journals and publicity of proceedings. The common council is the judge of the qualification, elections, and returns of their own members, and the other officers elected under the provisions of this title. They may determine contested elections; they may provide rules for their own proceedings, punish any member or other person for disorderly conduct in their presence, and, with the concurrence of two thirds of their number, expel any member, but not a second time for the same cause; they must keep a journal of their proceedings, and at the desire of any member must cause the yeas and nays to be taken and entered on any question; and their proceedings must be public. En. March 12, 1872.

§ 4408. Additional powers of common council. The common council has power:

1. To create the offices of city clerk, city attorney, assessor, and collector, and such other offices as may be necessary, and prescribe their duties and fix their compensation.

2. To establish and fix the salaries of the mayor, police judge, and other city officers, and also fix a tariff of fees for the officers entitled to such, designating the fees allowed for each particular item of service, and cause the same to be published in like manner with the ordinances passed by the common council.

3. To manage the finances and property of the city.

4. To regulate the streets, wharves, piers, and chutes in the city and the use thereof.

5. To establish or authorize slaughter-houses and markets, and regulate the same.

6. To provide for lighting, watering, and cleaning the city, and protecting it against fire.

7. To license and regulate hacks, cabs, carts, omnibuses, railway cars, and all other vehicles, butchers, porters, pawnbrokers, peddlers, showmen, and junk shop keepers, theaters, and all other places of public amusement.

8. To provide for licensing any or all business not prohibited by law, and fix the amount of license tax for the same.

9. To regulate the keeping and use of animals, and the keeping and use of gunpowder and other dangerous substances.

10. To suppress gaming, gambling-houses, and other disorderly houses, nuisances of every description, and all kinds of vice and immorality.

11. To prohibit the burial of the dead within the city, except at such places and in such manner as the common council may determine.

12. To establish and regulate a police department.

13. To establish and regulate a fire department.

14. To impose penalties for the violation of ordinances; but no single penalty must exceed a fine of five hundred dollars, or imprisonment for ten days, or both.

15. To impose and appropriate fines, penalties, and forfeitures for breaches of ordinances.

16. To make by-laws and ordinances not repugnant to the constitution and the laws of the United States or of this state.

17. To require any land or building to be cleansed at the expense of the owner or occupant and upon his default, may do the work and assess the expense upon the land or building.

18. To establish a board of health to prevent the introduction and spreading of disease, or to ordain and adopt for the government of the city the "Quarantine" or "Health Regulations," provided by this code for San Francisco or Sacramento.

19. To levy and collect taxes, to lay out, extend, alter, or widen streets and alleys, and make appropriations for any object of city expenditures.

20. To erect and maintain poorhouses and hospitals, and pass such by-laws and ordinances for the regulation of the police as they may deem necessary. All ordinances must be published in the manner prescribed by the common council. En. March 12, 1872.

Cal.Rep.Cit. 74, 24; 78, 589; 95, 383; 109, 508; 109, 511. Subd. 18—135, 419.

Act conferring on cities of first class power to erect hospital: See General Laws, title Municipal Corporations.

Power to organize under general laws, act authorizing: See Idem.

Act authorizing sale of excess of water: See Idem.

Act authorizing leasing or ownership of gravel beds: See Idem.

Acts authorizing city authorities to execute trusts in relation to town lands: See Idem.

Acts validating acts of cities: See Idem.

Power to extend and complete sewers: See General Laws, title Sewers.

Act authorizing grant of franchise to railroad to build lines to park outside city limits: See General Laws, title Municipal Corporations.

Act authorizing fixing of water rates: See General Laws, title Water Companies.

§ 4409. Street improvements, how made. Whenever the owners of a major part of the property fronting on any street or avenue desire to improve such street by paving the same, or constructing sewers, or otherwise, the mayor and council may make such improvement at the expense of all the owners of property on the street, which expense must be in proportion to the number of feet owned by each. En. March 12, 1872.

Powers of municipal corporations: See, generally, ante, sec. 4354.

Acts relating to streets: See General Laws, title Streets.

§ 4410. To grant authority to gas and water companies. The common council, by ordinance, approved by the mayor, may grant to any gas or water company the privilege of laying down pipes in the streets and alleys of such city for supplying gas and water for the streets and buildings thereon, for a term not exceeding twenty-five years. En. March 12, 1872.

§ 4411. Reservations by cities. In exercising the authority mentioned in preceding section, the common council must reserve the right to grant similar privileges to other companies, and require the laying down of the pipes to be under the reasonable direction of the city authorities, and to be so laid as to do no injury to the proper use of the paving, planking or macadamizing of the streets and alleys, nor to private property situate thereon. En. March 12, 1872.

Privilege granted to any individual or company under certain conditions: Const. Cal., art. XI, sec. 19.

§ 4412. Contract for gas and water. The common council may contract with gas and water companies for supplying the streets and public buildings with all gas and water necessary for their proper use; the rates to be paid therefor must not be fixed for a term exceeding five years, and the city authorities must reserve the right to abrogate such contract whenever gas or water is offered to be supplied at two thirds of such fixed contract price. En. March 12, 1872.

§ 4413. Restrictions and conditions to be imposed. In granting authority to lay down pipes, and in contracting for gas and water, the common council must impose such restrictions and conditions, and provide for such locations and construction of gas and water works and pipes as to work the least possible public or private inconvenience, and provide for enforcing such restrictions and conditions. En. March 12, 1872.

§ 4414. Ordinance, how vetoed, and how passed over veto. Every ordinance passed by the common council must, before it becomes effective, be presented to the mayor for his approbation. If he approve it, he must sign it; if not, he must return it, with his objections, in writing,

to the common council, who must cause the same to be entered upon its journals and proceed to reconsider the same. If, after such consideration, two thirds of all the members of the common council elect shall agree to pass the same, it becomes an ordinance. In all such cases the votes must be taken by yeas and nays, and the names of the members voting for and against the same must be entered on the journal. If any ordinance is not returned by the mayor within ten days (Sundays excepted) after it is presented to him, the same becomes effective, as if the mayor had signed it. En. March 12, 1872.

Act requiring ordinances and resolutions to be signed by the mayor: See General Laws, title Ordinances.

CHAPTER IV.

JUDICIAL POWERS.

§ 4424. Police judge; vacancy, how filled.
§ 4425. Police court clerk.
§ 4426. Criminal jurisdiction.
§ 4427. General and exclusive jurisdiction
§ 4428. When justice of the peace to act as police judge.
§ 4429. Always open, except on non-judicial days.
§ 4430. Proceedings in criminal offenses not triable in.
§ 4431. Criminal trials in police courts.
§ 4432. Civil practice in police courts.

§ 4424. Police judge; vacancy, how filled. The city police judge must be a qualified elector of the city. Any vacancy in the office of police judge must be filled by an appointee of the mayor, made with the advice and consent of the common council. En. March 12, 1872.

Cal.Rep.Cit. 134, 501.

Police courts, creation of and acts relating to: See General Laws, title Police Courts.

§ 4425. Police court clerk. The police judge may appoint a clerk, with such compensation, by way of salary or fees, as the common council may by ordinance provide. En. March 12, 1872.

Cal.Rep.Cit. 134, 501.

§ 4426. Criminal jurisdiction. The police court has exclusive jurisdiction of the following public offenses committed within the city boundaries:

1. Petit larceny;
2. Assault and battery, not charged to have been com-

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mitted upon a public officer in the discharge of his official duty, or with intent to kill;

3. Breaches of the peace, riots, affrays, committing willful injury to property and all misdemeanors punishable by fine not exceeding five hundred dollars or by imprisonment not exceeding six months, or by both such fine and imprisonment; and,

4. Of proceedings respecting vagrants, lewd or disorderly persons. En. March 12, 1872.

Cal.Rep.Cit. 47, 128; 66, 4.

§ 4427. General and exclusive jurisdiction. The police court also has exclusive jurisdiction:

1. Of all proceedings for the violation of any ordinance of the city, both civil and criminal;

2. Of any action for the collection of taxes and assessments levied for city purposes; or for the erection or improvement of any schoolhouse or public buildings; for the laying out or opening or improving any public street or sidewalk, lane, alley, bridge, wharf, pier or dock; or for the purchase of or the improvement of any public grounds; or for any and all public improvements made and ordered by the city within its limits, when the amount of the tax or assessments sought to be collected against the person assessed is less than three hundred dollars; but no lien upon the property taxed or assessed for the non-payment of the taxes or assessment can be foreclosed in any such action;

3. Of an action for the collection of money due to the city, or from the city to any person, when the amount sought to be collected, exclusive of interest and costs, is less than three hundred dollars;

4. For the breach of any official bond given by any city officer, and for the breach of any contract, and any action for damages in which the city is a party or is in any way interested; and all forfeited recognizances given to or for the benefit or in behalf of the city; and upon all bonds given upon any appeal taken from the judgment of the court in any action above named where the amount claimed, exclusive of costs, is less than three hundred dollars;

5. For the recovery of personal property belonging to the city, when the value of the property (exclusive of the

damages for the taking or detention) is less than three hundred dollars; and,

6. Of an action for the collection of any license required by any ordinance of the city. En. March 12, 1872.

Cal.Rep.Cit. 51, 500; 66, 4.

§ 4428. **When justice of the peace to act as police judge.** In all cases in which the judge is a party, or in which he is interested, or in which he is a witness, or in which he is related to either party by consanguinity or affinity within the third degree, and in case of sickness or inability, or temporary absence from the city, the police judge, or judge of the police judge court, may by written request call in any justice of the peace of the same county to act in his place and stead, and while so acting shall be vested with the power of the judge for whom he so holds court. In which case the proper entry of the proceedings before the attending justice, subscribed by him, shall be made in the docket of the judge for whom he so holds the court; and the same shall be prima facie evidence of such proceedings, and form and become a part of the record of any, or any part of any and all actions, causes or proceedings had before such attending justice while so holding the court. En. March 12, 1872. Am'd. 1897, 97.

§ 4429. **Always open, except on non-judicial days.** Police courts are always open for the transaction of business, except on non-judicial days. En. March 12, 1872.

§ 4430. **Proceedings in criminal offenses not triable in.** Proceedings in the police court in criminal actions for offenses not triable in such courts must be had in conformity with the provisions of part II, title III, chapter VII of the Penal Code. En. March 12, 1872.

Preliminary examination: Pen. Code, secs. 858 et seq.

§ 4431. **Criminal trials in police courts.** Proceedings in the police courts in criminal actions triable in such courts are regulated in part II, title XI, chapter I of the Penal Code. En. March 12, 1872.

Proceedings in police courts and justices' courts: Pen. Code, secs. 1426 et seq.

§ 4432. **Civil practice in police courts.** Proceedings in the police courts in civil actions are regulated by part II,

title XII of the Code of Civil Procedure. En. March 12, 1872.

Cal.Rep.Cit. 47, 128; 57, 506; 134, 501.

Proceedings in civil actions in police courts: Code Civ. Proc., secs. 929-933.

CHAPTER V.

CERTAIN STATUTES RELATING TO CITIES AND TOWNS AND EXISTING CORPORATIONS CONTINUED.

§ 4442. Certain statutes continued in force.

§ 4442. Certain statutes continued in force. Nothing in this code affects any of the provisions of "An act to authorize and direct the municipal authorities of the several cities and incorporated towns of this state to execute certain trusts in relation to the town lands granted to the incorporated cities and towns in this state by the act of congress entitled An act for the relief of the inhabitants of cities and towns upon the public lands, approved March second, eighteen hundred and sixty-seven; approved March twenty-four, eighteen hundred and sixty-eight"; or of "An act to authorize and direct the county judges of the several counties of this state to execute certain trusts in relation to the town lands granted to the unincorporated towns in this state by the act of congress entitled An act for the relief of the inhabitants of cities and towns upon the public lands, approved March second, eighteen hundred and sixty-seven; approved March thirtieth, eighteen hundred and sixty-eight"; but such acts are continued in force. En. March 12, 1872.

Cal.Rep.Cit. 110, 194.

CHAPTER VI.

FUNDING AND REFUNDING OF CITY INDEBTEDNESS.

§ 4445. Powers to fund indebtedness; issuance and form of bonds.
§ 4446. Sale and exchange of bonds.
§ 4447. Tax for payment of bonds; "Bond Fund."
§ 4448. Redemption of bonds.
§ 4449. Proceedings on failure to levy tax.

§ 4445. Powers to fund indebtedness; issuance and form of bonds. The board of trustees or municipal council of any city having an outstanding indebtedness on the first day of January, eighteen hundred and eighty, evidenced by bonds or warrants thereof, by a vote of two thirds of

all the members thereof, are empowered, if they deem it for the public interest, to fund or refund the same, and issue bonds of the city therefor in sums not less than one hundred dollars nor more than one thousand dollars each, having not more than twenty years to run, and bearing a rate of interest not exceeding seven per cent per annum, payable semi-annually, which bonds shall be substantially in the following form: No. ——. The city of ———, in the county of ———, in the state of California, for value received, promises to pay ———, or order, at the office of the treasurer of said city, in ———, on the first day of ———, 18—, or at any time before that day, at the pleasure of the city, the sum of —— dollars, gold coin of the United States, with interest at the rate of —— per cent per annum, payable at the office of the said treasurer, semi-annually, on the first days of ——— and ———, in each year, on presentation and surrender of the interest coupons hereto attached. This bond is issued by the board of trustees (or municipal council, as the case may be), under the provisions of chapter six, of title three, of part four, of the Political Code of California, and in conformity with a resolution of said board of trustees (or municipal council), dated —— day of ———, 18—. In testimony whereof, the said city, by its board of trustees (or municipal council), has caused this bond to be signed by the president of the board of trustees (or municipal council), and attested by the auditor, with the city seal attached, this —— day of ———, 18—. (Seal.) ———, president of the board of trustees (or municipal council). Attest: ———, auditor. And the interest coupon shall be in the following form: $——. The treasurer of the city of ———, county of ———, state of California, will pay the holder hereof, on the —— day of ———, 18—, at his office in ———, —— dollars, gold coin, for interest on City Bond No. ——, issued under the provisions of chapter six, of title three, of part four, of the Political Code of California. ——, city auditor. If the president of the board of trustees (or municipal council), be ex-officio auditor, then and in that case said bonds shall be attested by the city clerk instead of the auditor. En. Stats. 1880, 105. Am'd. 1881, 35.

Cal.Rep.Cit. 112, 325; 112, 327; 112, 331.

Compare as to county indebtedness: Ante, secs. 4048-4052.

Act authorizing issuance of bonds to protect cities: See General Laws, title Municipal Corporations.

Acts in relation to funding indebtedness: See General Laws, title Bonds.

Act for destruction of unsold municipal bonds: See General Laws, title Bonds.

Judgments against cities and counties over 100,000, how paid: See General Laws, title Judgments.

§ 4446. Sale and exchange of bonds. Whenever bonds issued under this chapter shall be duly executed, numbered consecutively and sealed, they shall be delivered to the city treasurer, and his receipt taken therefor, and he shall stand charged on his official bond with all bonds delivered to him and the proceeds thereof, and he shall sell the same or exchange them under the directions of the board of trustees, or municipal council, on the best available terms, for any legal indebtedness of the city outstanding on the first day of January, eighteen hundred and eighty; but in neither case for a less sum than the face value of the bonds, and all interest accrued on them at the date of such sale or exchange; and if any portion of the said bonds are sold for money, the proceeds thereof shall be applied exclusively for the payments of liabilities existing against the city at and before the date above named. When they are exchanged for bonds or warrants, or other legal evidences of city indebtedness, the treasurer shall at once proceed to cancel the old bonds and such other evidences of indebtedness by indorsing on the face thereof the amount for which they were received, the word "canceled," and the date of cancellation. He shall also keep a record of bonds sold or exchanged by him, by number, date of sale, amount, date of maturity, the name and postoffice address of the purchaser, and, if exchanged, what evidences of indebtedness were received therefor, which record shall be open at all times for inspection by the public. Whenever the holder of any bond shall sell or transfer it, the purchaser shall notify the treasurer of such purchase, giving at the same time the number of the bond transferred, and his postoffice address, and every transfer shall be noted on the record. The treasurer shall also report, under oath, to the board, at each regular session, a statement of all bonds sold or exchanged by him

since the preceding report, and the date of such sale or exchange, and when exchanged a list or description of the city indebtedness exchanged therefor, and the amount of accrued interest received by him on such sale or exchange, which latter sum shall be charged to him as money received by him on bond fund, and so entered by him on his books; but such bonds shall not be sold or exchanged for any indebtedness of the city, except by the approval of the board of trustees, or municipal council of said city. No sale shall be made of any such bonds, except to the highest bidder, after advertising bids for the purchase of the same for not less than three weeks, in at least one newspaper published in the county, the right being reserved in such advertisement to reject any or all such bids. En. Stats. 1880, 106.

§ 4447. Tax for payment of bonds: "Bond Fund." The board of trustees, or municipal council, shall cause to be assessed and levied each year, upon the taxable property of the city, in addition to the levy authorized for other purposes, a sufficient sum to pay the interest on outstanding bonds issued in conformity with the provisions of this chapter, accruing before the next annual levy, and such proportion of the principal that at the end of five years the sum raised from such levies shall equal at least twenty per cent of the amount of bonds issued; at the end of eight years at least forty per cent of the amount, and at and before the date of maturity of the bonds shall be equal to the whole amount of the principal and interest; and the money arising from such levies shall be known as the "Bond Fund," and shall be used for the payment of bonds and interest coupons, and for no other purpose whatever; and the treasurer shall open and keep in his books a separate and special account thereof, which shall at all times show the exact condition of said bond fund. En. Stats. 1880, 107.

§ 4448. Redemption of bonds. Whenever the amount in the hands of the treasurer belonging to the bond fund, after setting aside the sum required to pay the interest maturing before the next levy, is sufficient to redeem one or more bonds, he shall notify the owner of such bond or bonds, by advertising in any newspaper published in the county, not less than once a week, for three successive

weeks, and in some newspaper of general circulation published in the city of San Francisco, not less than once a week for three successive weeks, that he is prepared to pay the same, with all interest accrued thereon; and if not presented for payment or redemption within forty days after the first publication of such notice, the interest on such bonds shall cease and the amount due thereon shall be set aside for its payment whenever presented. All redemptions shall be made in the exact order of their issuance, beginning at the lowest or first number, and the notice herein required shall be directed to the postoffice address of the owner, as shown by the record kept in the treasurer's office. En. Stats. 1880, 107.

§ 4449. Proceedings on failure to levy tax. If the board of trustees, or municipal council, of any city which has issued bonds under the provisions of this chapter, shall fail to make the levy necessary to pay such bonds or interest coupons at maturity, and the same shall have been presented to the city treasurer and the payment thereof refused, the owner may file the bond, together with all unpaid coupons, with the county treasurer of the county in which said city is situated, taking his receipt therefor, and the same shall be registered in the office of the county treasurer; and the district attorney shall as soon as practicable, proceed by mandamus in the proper court, in the name of the owner of the bond, to compel the said tax to be levied in said city, and at a sufficient rate to realize the amount of principal and interest past due and to become due prior to next levy, and the same shall be levied and collected as a part of the county tax, and paid into the county treasury, and pass to the special credit of such city as bond tax, and shall be paid by warrants as the payments mature to the holder of such registered obligations, as shown by the register in the office of the county treasurer, until the same shall be fully satisfied and discharged; any balance then remaining being passed to the general account and credit of said city. En. Stats. 1880, 107.

Cal.Rep.Cit. 112, 325; 112, 327.

Part 4

TITLE IV.

LIABILITIES OF COUNTIES AND CITIES FOR INJURIES TO PROPERTY BY MOBS OR RIOTS.

CHAPTER I.

§ 4452. Municipal corporations responsible for injuries by.
§ 4453. Actions for damages must be tried, where.
§ 4454. When action must be commenced.
§ 4455. Warrant to be issued for payment of damages; tax therefor.
§ 4456. Plaintiff not to recover if damage resulted from his own neglect.
§ 4457. Application of foregoing provisions to injuries to levees, etc.

§ 4452. Municipal corporations responsible for injuries by. Every municipal corporation is responsible for injuries to real or personal property situate within its corporate limits, done or caused by mobs or riots. En. March 12, 1872.

Cal.Rep.Cit. 55, 324.

§ 4453. Actions for damages must be tried, where. Actions for damages under the preceding section must be tried in the county in which the property injured is situated. En. March 12, 1872.

Cal.Rep.Cit. 55, 324.

§ 4454. When action must be commenced. All actions herein provided for must be commenced within one year after the act complained of is committed. En. March 12, 1872.

Like provision in Code of Civil Procedure, sec. 340, subd. 5.

§ 4455. Warrant to be issued for payment of damages; tax therefor. On the certificate of the presiding officer, or of the clerk of the court in which the judgment is rendered, the board of supervisors of the county or the legislative authority of the city must by ordinance direct and cause to be issued a warrant for the payment thereof on the general fund, and the same must be paid in its regular order, as other warrants of the municipal corporation are paid; and must at the proper times levy and cause to be collected a tax on the taxable property of such municipal corporation for the payment of such warrant within a period of not more than three years. En. March 12, 1872.

Cal.Rep.Cit. 55, 324.

§ 4456. Plaintiff not to recover if damage resulted from his own neglect. The plaintiff in any action authorized by this title must not recover if it appears upon the trial that the damage complained of was occasioned or in any manner aided, sanctioned or permitted by his carelessness or negligence. En. March 12, 1872.

§ 4457. Application of foregoing provisions to injuries to levees, etc. The provisions of this title and chapter are applicable to cases where the levees and other works of reclamation of any district are injured or destroyed by mobs or riots; and the actions brought for damages therefor must be prosecuted by the attorney-general of the state, in the name of the people of the state of California, and the amount recovered in such actions must be paid to the treasurer of the county, who must place the same to the credit of the district. En. Stats. 1873-4, 59.

TITLE V. Part 4

PUBLICATIONS BY STATE OFFICERS AND COMMISSIONERS, OR THE OFFICERS OF COUNTIES, CITIES, CITIES AND COUNTIES, OR TOWNS.

§ 4458. Publications.
§ 4459. Newspapers of general circulation.

§ 4458. Publications. Whenever any publication, or notice by publication, or official advertising is required to be given or made by the provisions of this code, the Civil Code, the Code of Civil Procedure, the Penal Code, or by any law of the state, by any officer now existing, or any hereafter to be created, in this state, or any political subdivision thereof, or by any officer of a county, city, city and county, or town, such publication or notice by publication, or official advertising, shall be given or made only in a newspaper of general circulation, where such a newspaper is published within the jurisdiction of said official. En. Stats. 1903, 478. 1905 406

§ 4459. Newspapers of general circulation. A newspaper of general circulation is a newspaper published for the dissemination of local or telegraphic news and in- 1905 406

telligence of a general character, having a bona fide subscription list of paying subscribers, and which shall have been established, printed, and published, in the state, county, city, city and county, or town, where such publication, notice of publication, or official advertising, is given or made, for at least one year. A newspaper devoted to the interests, or published for the entertainment of a particular class, profession, trade, calling, race, or denomination, or any number thereof, is not a newspaper of general circulation. En. Stats. 1903, 479.

Rev Sec 4460 1905-406
Rev Sec 4461 1905-406
Rev Sec 4462 1905-406

PART V.

OF THE DEFINITION AND SOURCES OF LAW—EFFECT AND PUBLICATION OF THE CODES, AND THE EXPRESS REPEAL OF STATUTES.

PART V.

OF THE DEFINITION AND SOURCES OF LAW—EFFECT AND PUBLICATION OF THE CODES, AND THE EXPRESS REPEAL OF STATUTES.

Title I. Definition and Sources of the Law, §§ 4466-4468.
II. Effect of the Codes, §§ 4478-4484.
III. Publication of the Codes, and Statutes Continued in Force, § 4494.
IV. Express Repeal of Statutes, §§ 4504, 4505.

TITLE I.

DEFINITION AND SOURCES OF THE LAW.

§ 4466. Definition of law.
§ 4467. How expressed.
§ 4468. Common law, when rule of decision.

§ 4466. Definition of law. Law is a solemn expression of the will of the supreme power of the state. En. March 12, 1872.

Cal.Rep.Cit. 47, 480.

§ 4467. How expressed. The will of the supreme power is expressed:

1. By the constitution;
2. By statutes. En. March 12, 1872.

Cal.Rep.Cit. 47, 480.

§ 4468. Common law, when rule of decision. The common law of England, so far as it is not repugnant to or inconsistent with the constitution of the United States, or the constitution or laws of this state, is the rule of decision in all the courts of this state. En. March 12, 1872.

Cal.Rep.Cit. 58, 471; 78, 487; 78, 566; 80, 50; 83, 518; 104, 185; 108, 592; 132, 534; 132, 535; 132, 559; 133, 125.

Part 3

TITLE II.

EFFECT OF THE CODES.

§ 4478. Construction of the codes with relation to the laws passed at the present session.
§ 4479. Laws passed at present session prevail.
§ 4480. Construction of codes with relation to each other.
§ 4481. Conflicts between titles, which to prevail.
§ 4482. Conflicts between chapters, which to prevail.
§ 4483. Conflicts between articles, which to prevail.
§ 4484. Conflicting sections of the same title, which to prevail.

§ 4478. Construction of the codes with relation to the laws passed at the present session. With relation to the laws passed at the present session of the legislature, The Political Code, Civil Code, Code of Civil Procedure and Penal Code, must be construed as though each had been passed on the first day of the present session. En. March 12, 1872.

Cal.Rep.Cit. 47, 128; 47, 510; 49, 274; 53, 572; 65, 299; 66, 315; 71, 16; 71, 17; 76, 637; 128, 261.

Construed as though passed on first day of session, otherwise as to special title: Ante, sec. 3891.

§ 4479. Laws passed at present session prevail. If the provisions of any law passed at the present session of the legislature contravene or are inconsistent with the provisions of either of the four codes, the provisions of such law must prevail. En. March 12, 1872.

Cal.Rep.Cit. 47, 128; 47, 510; 53, 572; 71, 16; 71, 17; 93, 424.

§ 4480. Construction of codes with relation to each other. With relation to each other, the provisions of the four codes must be construed (except as in the next two sections provided) as though all such codes had been passed at the same moment of time, and were parts of the same statute. En. March 12, 1872.

Cal.Rep.Cit. 46, 608; 51, 297; 64, 230; 64, 240; 65, 298; 73, 259; 83, 397; 92, 247; 100, 327; 101, 288; 102, 520; 105, 558; 120, 639; 122, 211; 122, 237; 128, 261; 137, 15.

§ 4481. Conflicts between titles, which to prevail. If the provisions of any title conflict with or contravene the provisions of another title, the provisions of each title must prevail as to all matters and questions arising out of the subject-matter of such title. En. March 12, 1872.

Cal.Rep.Cit. 46, 608; 62, 487; 76, 636; 76, 637; 76, 638; 83, 48; 83, 397; 88, 455; 104, 683; 125, 481.

§ 4482. Conflicts between chapters, which to prevail. If the provisions of any chapter conflict with or contravene the provisions of another chapter of the same title, the provisions of each chapter must prevail as to all matters and questions arising out of the subject-matter of such chapter. En. March 12, 1872.

Cal.Rep.Cit. 46, 608; 62, 136; 83, 455; 113, 257.

§ 4483. Conflicts between articles, which to prevail. If the provisions of any article conflict with or contravene the provisions of another article of the same chapter, the provisions of each article must prevail as to all matters and questions arising out of the subject-matter of such article. En. March 12, 1872.

Cal.Rep.Cit. 46, 608; 83, 455; 100, 378.

§ 4484. Conflicting sections of the same title, which to prevail. If conflicting provisions are found in different sections of the same chapter or article, the provisions of the sections last in numerical order must prevail, unless such construction is inconsistent with the meaning of such chapter or article. En. March 12, 1872.

Cal.Rep.Cit. 46, 608; 62, 187; 64, 609; 65, 299; 73, 259; 76, 637; 135, 7.

Part 5

TITLE III.

PUBLICATION OF THE CODES.

§ 4494. Codes not published as part of the statutes.

§ 4494. Codes not published as part of the statutes. The codes passed at this session of the legislature must not be published as part of the statutes passed at this session, but provision must be made by law for their publication. En. March 12, 1872.

Publication of codes: See Stats. 1872, pp. 481-484.

Publication and distribution of statutes: See ante, sec. 318.

Part 5

TITLE IV.

EXPRESS REPEAL OF STATUTES.

§ 4504. Repeal of repealed statutes, effect of.
§ 4505. Express repeal of statutes to be provided for.

§ 4504. Repeal of repealed statutes, effect of. The repeal of any statute or part of a statute heretofore repealed

must not be construed as a declaration, express or by implication, that such statute or part of a statute has been in force at any time subsequent to such first repeal. En. March 12, 1872.

§ 4505. Express repeal of statutes to be provided for. The express repeal of statutes will be provided for by a separate statute, and such statute, after its passage, must be construed in the same manner, and must have like effect as if it were part of this code. En. March 12, 1872.

APPENDIX.

ATTORNEY-GENERAL.

Acts allowing the attorney-general to settle and dismiss certain suits may be found in the statutes of 1891, pages 182, 268 and 467.

BOARD OF EXAMINERS.

An act to provide for the purchase of certain supplies for state officers and members of the legislature.

[Approved March 16, 1876; Stats. 1875-6, p. 314.]

The act constituted the board of examiners a furnishing board and prescribed its powers and duties.

An act authorizing the state board of examiners to sell old furniture and all material belonging to the state and not required for public use.

[Approved March 31, 1891; Stats. 1891, p. 452; in effect immediately.]

BONDS.

An act to provide for the payment by the state or counties, or cities, or cities and counties, of the premium or charge on official bonds when given by surety companies.

[Approved March 25, 1903; Stats. 1903, p. 476.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. The premium or charge for bonds given by surety companies for state officials, county officials, city officials, or city and county officials, shall be paid by the state, county, city, or city and county respectively; provided, however, that no premium or charge shall exceed one half of one per cent per annum on the amount of such bond; and provided further, that this act shall not apply to notaries public.

Sec. 2. This act shall take effect from and after its passage.

CITY AND COUNTY ATTORNEYS.

An act to provide for furnishing assistants to every attorney and counselor, city attorney, and city and county attorney, and to each law officer, of whatever official name he may be designated, officially conducting the civil litigation of each city or city and county having one hundred thousand or more inhabitants, and providing the mode in which such assistants shall be appointed and designated as officers of each city or city and county, and establishing the compensation and prescribing the duties of such assistants.

[Approved March 11, 1891; Stats. 1891, p. 95; in effect immediately.]

The act fixed the number of assistants and their compensation. It was superseded as to San Francisco by the charter.

CONSTABLES.

An act legalizing the official acts of constables in this state, performed between the first Monday of January and the first Monday of March, eighteen hundred and seventy-four.

[Approved March 27, 1874; Stats. 1873-4, p. 700; in effect immediately.]

The nature of the act appears from its title.

CONTROLLER.

An act repealing the act of 1895 allowing an extra clerk to the controller and creating the office of expert to the controller was passed March 20, 1899; Stats. 1899, p. 146; in effect immediately.

COUNTY CLERKS.

An act in relation to certain deputies, assistants, and copyists of county clerks.

[Approved April 2, 1880; 1880, 20 (Ban. ed. 104). Am'd. 1891, 5.]

Unconstitutional: San Francisco v. Broderick, 125 Cal. 188. Superseded as to San Francisco by the charter.

An act authorizing county clerks in this state to take and certify affidavits for United States pension claimants, without the payment of fees or compensation therefor.

Affidavits certified without fees.

Section 1. All county clerks in this state are hereby authorized and empowered to take and certify affidavits for United States pension claimants without demanding or receiving any fees or compensation therefor.

Sec. 2. This act shall take effect immediately.

[Approved March 10, 1887; 1887, 81.]

DISTRICT ATTORNEYS.

An act relating to district attorneys, their assistants, and clerks, in counties and cities and counties having a population of more than one hundred and twenty-five thousand.

[Approved March 2, 1891; Stats. 1891, p. 21.]

Unconstitutional: Darcy v. Mayor, 104 Cal. 642; Ex parte Giambonini, 112 Cal. 574. Superseded by County Government Act, 1897, and the charter of San Francisco.

An act in relation to the fees of district attorneys in certain counties.

[Approved March 30, 1872; 1871-2, 799; in effect immediately.]

This act related to the fees of district attorneys in Butte, Inyo, Placer, and Shasta.

The code commissioners say this act was probably repealed by secs. 171, 177, 186 and 211 of the County Government Act of 1897, 523, 527, 540, 568, fixing the salaries of district attorneys.

ELECTIONS.

An act to ascertain the will of the people upon the subject of requiring an educational qualification of voters.

[Approved March 17, 1891; Stats. 1891, p. 115.]

The people, at the election held in November, 1892, voted in favor of an educational qualification.

An act in relation to municipal elections where held separate from state elections, and elections for freeholders or charters, and to repeal the act of 1897 relating to elections of freeholders was approved March 4, 1899; Stats. 1899, p. 63; in effect immediately.

An act to promote the purity of elections by regulating the conduct thereof, and to support the privilege of free suffrage by prohibiting certain acts and privileges in relation thereto, and providing for the punishment thereof.

[Approved February 23, 1893; Stats. 1893, p. 12; in effect immediately; am'd. 1895, 227.]

Unconstitutional in so far as it requires an oath of a successful candidate for office, in addition to that presented by the constitution: Bradley v. Clark, 133 Cal. 196.

Section 1. All nominations of candidates for public office to be filled by election within this state, and presidential electors, must be filed with the proper officer within the time and in the manner prescribed by law. Every certificate of nominations made by the members of a political party, or by a convention or organized assemblage of delegates, or other body of citizens representing a political party or principle, must be signed as provided by the provisions of sections eleven hundred and eighty-seven (1187) or eleven hundred and eighty-eight (1188) of the Political Code of this state; and at the time of filing the certificate of nomination, the person signing such certificates of nomination shall also file with the officer authorized by law to receive and file such certificate the names of five persons, who have accepted, in writing, and consented to act, selected to receive, expend, audit, and disburse all moneys contributed, donated, subscribed, or in any wise furnished or raised for the purpose of aiding or promoting the election of the candidates for office or electors named in the said certificate of nomination, or in any manner to be used in respect of the conduct and management of the election at which such candidates are to be voted for. The certificate of nomination must not be received or filed unless accompanied by the names of five persons, citizens and electors of this state, to compose such committee, together with their written acceptance and consent to act as such committee, as required by this act. All independent candidates must file the names of five persons to act as an auditing committee, in the same manner and at the same time as required by all regular party nominees or candidates, and all members of such an auditing com-

mittee acting for an independent candidate are to be governed by the same laws and requirements as the auditing committee of all regular party nominees or candidates. The said committee shall have the exclusive custody of all moneys contributed, donated, subscribed, or in anywise furnished or raised for or on behalf of the political party, organized assemblage or body, or candidates represented by said committee, and shall disburse the same on proper vouchers, under the directions of the body of superior authority to which it is subject, if there be any. If, for any cause, a vacancy shall occur in the membership of said committee prior to the fifteenth day before the day of holding an election, the vacancy must be filled by the same authority as vacancies in the list of nominees are filled. No vacancy by resignation therefrom or refusal to act upon said committee shall occur after the fifteenth day before the day of holding an election, or until the said committee shall have completed and discharged all of the duties required of them by this act. If any vacancy be created by death or legal disability subsequent to the fifteenth day before the day of holding an election, such vacancy shall not be filled, and the remaining members shall discharge and complete the duties required of said committee as if such vacancy had not been created. [Amendment approved March 27, 1895; Stats. 1895, p. 227.]

Sec. 2. Within twenty-one days after the completion of the official canvass of the result of the election, said committee shall file, as hereinafter provided, an itemized statement, showing in detail all the moneys contributed, donated, subscribed, or in any wise furnished or received to the use of the political party, organized assemblage, or body, or any or all of the candidates for public office, or electors coming under the control of such committee, or into their custody, directly or indirectly, together with the name of each contributor, donor, subscriber, or source from which such moneys were derived, and an itemized statement of all money expended; such statement shall give the names of the various persons to whom such moneys were paid, the specific nature of each item, by whom the service was performed, and the purpose for which it was expended. There shall be attached to such statement an affidavit, subscribed and sworn to by each

member of said committee, setting forth, in substance, that the statement thus made is in all respects true, and that the same is a full and detailed statement of all moneys, securities, or equivalents for moneys coming under their control or into their custody, and by them expended, directly or indirectly. Such statement shall be filed in the same office in which is filed the certificate of their selection as such committee, and shall become a public document, and open to inspection by any citizen.

Sec. 3. Every candidate who is voted for at any public election held within the state shall, within fifteen days after the day of holding such election, file, as hereinafter provided, an itemized statement, showing in detail all moneys paid, loaned, contributed, or otherwise furnished to him, or for his use, directly or indirectly, in aid of his election, and all moneys contributed, loaned or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Such statement shall give the names of the various persons who paid, loaned, contributed, or otherwise furnished such moneys in aid of his election, and the names of the various persons to whom such moneys were contributed, loaned, or paid, the specific nature of each item, the service performed, and by whom performed, and the purpose for which the money was expended, contributed, or loaned. There shall be attached to such statement an affidavit, subscribed and sworn to by such candidate, which must be substantially in the following form:

State of California, }
County of ——, } ss.

I (name), having been a candidate for the office of ——, at the election held in the county, city and county, city, or other division, state of California, on the —— day of ——, 18—, do solemnly swear that I have paid the sum of $—— for my expenses at the said election, and no more, and that, except as aforesaid, I have not, nor to the best of my knowledge and belief has any person, club, society, or association, on my behalf, directly or indirectly, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability, on account of or

in respect of the conduct or management of the said election, and except such moneys as may have been paid to or expended by the committee selected as prescribed by the act of the legislature of this state approved (date of this act). And I further solemnly swear that, except as aforesaid, no money, security, or equivalent for money has to my knowledge or belief been paid, advanced, given, or deposited by any one, to or in the hands of myself, or any other person, for the purpose of defraying any expenses incurred on my behalf, or in aid of my election, or on account of or in respect of the conduct or management of the said election. And I further solemnly swear that I will not, at any future time, make, or be a party to the making or giving of, any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide or be a party to the providing of any money, security, or equivalent for money for the purpose of defraying any such expenses.

If the candidate seeks to avoid the responsibility of any illegal payment made by any other person in his behalf, he shall set out such illegal payment and disclaim responsibility therefor. Candidates for office to be filled by the electors of the state, or of any political division thereof greater than a county, and for members of the senate and assembly, representative in Congress, or for members of the state board of equalization, state board of railroad commissioners, shall file their statements in the office of the secretary of state. Candidates for all other offices shall file their statements in the office of the clerk of the county wherein the election is held, and within which the duties of the office for which the candidate is voted for are to be exercised. The statement and affidavit of a committee or candidate shall be recorded in the office of the county recorder, and shall, after being filed, become a public record, and open at all times to public inspection. Vouchers must be filed for all expenditures, except in the case of sums under five dollars.

Sec. 4. Any candidate for a public office who shall refuse or neglect to file, or who makes a false statement of moneys received or expended, as prescribed by section three of this act, shall in addition to the punishment of such offense prescribed by the laws of this state, forfeit

any office to which he may have been elected at the election with reference to which the statement is required to be made. If a candidate elected to a public office refuses or neglects to file the statement prescribed by section three of this act, no certificate of election shall be issued to him, neither shall any official bond presented or offered by him be approved, and the incumbent of the office, unless he is himself a defaulting candidate, must not surrender or deliver up said office, but shall continue to discharge the duties and shall receive the emoluments thereof. If the candidate refusing or neglecting to file the statement, or making a false statement of moneys received or expended, is the incumbent of an office of profit or trust under the laws of this state, in addition to the punishment prescribed by the laws of this state for such refusal or neglect, or for making such false statement, he shall be deprived of his office, and shall also forfeit any office to which he may have been elected at the election in reference to which the statement is required to be made.

Sec. 5. No sum of money shall be paid and no expense shall be incurred by or on behalf of a candidate at an election held within this state at which he is a candidate, or by or on behalf of a committee selected under the provisions of section one of this act, or by or on behalf of the body or superior authority to which such committee is subject, if any, whether before, during, or after an election, on account of or in respect of the conduct or management of such election, except for the expenses of holding and conducting public meetings for the discussion of public questions, and of printing and circulating specimen ballots, handbills, cards, and other papers previous to such election, and of advertising, and of postage, expressage, telegraphing and telephoning, and of supervising the registration of voters, and watching the polling or counting of votes cast at such election, and of salaries of persons employed in transacting business at office or headquarters and necessary expenses of maintaining same, and for rent of rooms necessary for the transaction of the business of the candidate or committee, or superior authority to which such committee is subject, if any, and for necessary incidental expenses, which shall not exceed the sum of one hundred dollars,

if expended by a candidate, or one thousand dollars, if expended by a committee; and no sum shall be paid and no expense shall be incurred, directly or indirectly, by or on behalf of a candidate, whether before, during, or after an election, on account of or in respect of the conduct and management of an election at which he is a candidate, in excess of the maximum amount following, that is to say: if the term of the office for which the person is a candidate be for one year or less, five per cent of the amount of one year's salary of the office; if the term be for more than one year, and not more than two years, ten per cent of the amount of one year's salary of the office; if the term be for more than two years, and not more than three years, fifteen per cent of the amount of one year's salary of the office; if the term be for more than three years, and not more than four years, twenty per cent of the amount of one year's salary of the office; if the term be for more than four years, ten per cent of the amount of one year's salary of the office; if the office be one for which, in lieu of salary, there is allowed per diem, for a statutory period, or for the number of days actually engaged in the performance of public duties, twenty-five per cent of the amount to accrue for the statutory period; if the office be one for which, in lieu of salary, a yearly sum is allowed the officer for all the expenses of his office, the expenditures of the candidate for such office shall not exceed the amount of ten per cent of the allowance for such office for one year; if the office be one for which no salary or compensation is allowed except fees, or a salary not exceeding nine hundred dollars per annum and fees, the expenditures of the candidate for such office shall not exceed the amount of one hundred and fifty dollars; if the office be one for which no salary or compensation is allowed, or for which a per diem is allowed for the days actually employed in the performance of a public duty, the expenditures of the candidate for such office shall not exceed one hundred dollars; if the candidate is also at the same time a candidate for an unexpired term, he shall not pay or expend any sum on account of such unexpired term, but the maximum amount to be expended by such candidate shall be as hereinabove provided.

Sec. 6. Every claim payable by the committee selected

under the provisions of section one of this act on account of or in respect of any expense incurred in the conduct and management of an election held within this state, or on behalf of the candidates of the political party, organized assemblage, or body which such committee represents, must be presented to the committee within ten days after the return day of the election, and if not so presented, the same shall not be paid, and no action shall be commenced or maintained thereon, and all expenses incurred as aforesaid shall be paid within fifteen days after the completion of such official canvass, and not otherwise. Every claim in respect of any expenses incurred by or on behalf of a candidate at an election held within this state on account of or in respect of the conduct or management of such election shall be presented to such candidate within ten days after the day of election, and if not so presented, the same shall not be paid, and no action shall be instituted or maintained thereon; and all such expenses incurred as aforesaid must be paid within twelve days after the day of election, and not otherwise. Any person who makes a payment in contravention of this section, except where such payment is allowed, as provided by this act, is guilty of a misdemeanor.

Sec. 7. The superior court of the county wherein such statement is filed or is required to be filed, may, on the application of either the committee or candidate, or a creditor of either, allow any claim, not in excess of the maximum amount allowed by this act, to be presented and paid after the time limited by this act; and a statement of any sum so paid, with a certificate of its allowance, shall forthwith, after payment, be filed by the committee or candidate in the same office as the original statement of the committee or candidate. If the candidate or committee, upon such application, shall show to the satisfaction of said court that any error or false recital in such statement or affidavit, or that the failure to make such statement or affidavit, or to present, within the designated time, a claim otherwise just and proper, has been occasioned by the absence or illness of such candidate, or by the absence, illness or death of one or more members of such committee, or by the misconduct of any person other than such applicant, or by inadver-

tence or excusable neglect, or of any reasonable cause of a like manner, and not by reason of any want of good faith on the part of the applicant, the court may, after such notice of the application as the court shall require, and on the production of such evidence of the facts stated in the application as shall be satisfactory to such court, by order, allow such statement and affidavit to be filed, or such error or false recital therein to be corrected, or such claims to be paid, as to the court seems just; and such order shall relieve the applicant from any liability or consequences under this act in respect of the matters excused by the order. If the application is made by a creditor, the court may, under like conditions and upon a like showing, order the claim to be paid, and the creditor shall also be entitled to his costs. The claims of one or more creditors may be united in such application, but the amount and specific nature of each claim must be fully stated.

Sec. 8. No payment of money shall be made and no expense shall be incurred by any person in aid of, or for or on behalf of, any candidate, or on account of or in respect of the conduct or management of an election held within this state, except by a candidate or the committee selected under the provisions of section one of this act, or the committee, body, or superior authority to which such committee is subject; and all expenses incurred by the committee, body, or superior authority to which the said committee is subject shall be paid only from the fund in the custody of the said committee so selected, as required by this act. Any contract for the payment of money or any expense incurred contrary to the provisions of this section shall be absolutely void.

Sec. 9. No payment of any money shall be made by a committee or candidate for the rent of any premises to be used as a committee-room or headquarters, or for holding a meeting, or for the purpose of promoting the election of a candidate, or on account of, or in respect to the conduct or management of, an election, where intoxicating liquors are sold for consumption on the premises, or where intoxicating liquor is supplied to members of any club, society, or association; provided, that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of offices, or for

holding public meetings, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

Sec. 10. Every bill, placard, poster, pamphlet, or other printed matter having reference to an election, or to any candidate, shall bear upon the face thereof the name and address of the printer and publisher thereof, and no payment therefor shall be made or allowed unless such address is so printed.

Sec. 11. Whenever any candidate for a public office pays, lends, or contributes, or offers or agrees to pay, lend, or contribute, any money or other valuable consideration to or for any person, either for:

1. The doing or procuring to be done of any act forbidden to be done by the laws of this state relating to public elections; or

2. The commission of any crime or offense against the elective franchise, or the encouragement or assistance of a person in the commission of a crime or offense against the elective franchise, or aiding or assisting any person charged with the commission of a crime against the elective franchise to evade arrest or to escape conviction and punishment for such crime or offense; or

3. Providing wholly or in part the expense of boarding, lodging, or maintaining a person at any place or domicile in any election precinct or ward or district with the purpose of securing the vote of such person for himself or any other person at an election held within the state; or

4. The hiring or employment of a person to take or maintain a place in, or to otherwise obstruct or hinder, or to prevent the forming of, the line of voters awaiting their opportunity or time to enter the polling-place or election-booth of an election precinct; or

5. For services rendered in securing his nomination for the office of which he is a candidate, or for placing his name upon any list of nominees, filed with a public officer authorized to receive certificates of nomination, except the cost or expense authorized by the Political Code to be contributed by a candidate for nomination to defray the legal and authorized expenses of a primary election; and except, also, the cost or expense of circulating a

nominating petition for signatures of voters, or in consideration of any member of a convention, organized assemblage of delegates, or other body representing or claiming to represent a political party or principle, having voted to secure for him his selection or indorsement as the nominee of such convention, organized assemblage, or body, for the office for which he is a candidate, or in consideration of any person aiding him in securing his election or indorsement as aforesaid; or

6. In consideration of any person withdrawing as a candidate for public office or presidential elector at any election held within this state; or

7. For any purpose in contravention of the provisions of this act; or

8. For any purpose whatever in excess of the maximum amount which such candidate may lawfully expend under the provisions of this act; or

9. Makes any payment after the time limited by this act, unless the same is authorized as provided in this act; or unless it be in satisfaction of a judgment obtained against him, whether before, during, or after an election, in respect of or on account of such election, or who refuses or neglects to file the statement prescribed by section three of this act, or who makes or files a false statement thereof, or is guilty of any crime against the elective franchise, or of any offense which is punishable by fine or imprisonment, or both, under the provisions of this act—such candidate shall, in addition to the punishment prescribed by the laws of this state or by this act, forfeit any office to which he may have been elected at the election in reference to which such crime or offense was committed; and if the candidate so offending is the incumbent of an office of profit or trust under the laws of this state, he shall thereby forfeit this office. Any candidate who procures, aids, assists, counsels or advises the payment of any money or other valuable thing by or on behalf of a committee selected under the provisions of section one of this act, and such payment is made for any purpose which, if the money were expended by the candidate, would work a forfeiture of the office to which he has been elected, such payment shall be deemed to have been made by such candidate,

and he shall forfeit any office to which he may have been elected at the election in reference to which such payment was made by or on behalf of such committee.

Sec. 12. Any elector of the state, or of any county, city and county, city or of any political subdivisions of either, may contest the right of any person declared elected to an office to be exercised therein for any of the causes or offenses named in this act, or to annul and set aside the election of any person declared elected to an office to be exercised therein who has forfeited his office for any offense committed in contravention of this act. In such a proceeding the provisions of title two of part three of the Code of Civil Procedure of the state of California, relating to the proceedings of contesting certain elections, so far as they are not inconsistent with the provisions of this act, are applicable to proceedings authorized by this section. If the contest or proceedings be as to the right of any person declared elected to the office of senator or member of the assembly, the provisions of sections two hundred and seventy-three to two hundred and eighty-three, both inclusive, of the Political Code of this state shall govern and control the conduct and disposition of such contest or proceeding. If the contest be as to the right of any person declared elected to the office of governor or lieutenant-governor, such proceedings shall be had as are provided by sections two hundred and eighty-eight to two hundred and ninety-five, both inclusive, of the Political Code of this state, and shall govern and control the conduct and disposition of such proceeding. Any offense mentioned in this act which, if committed by the incumbent of an office, other than member of the senate or assembly, or governor or lieutenant-governor, or any other office named in section eighteen of article four of the constitution of this state, is cause of removal of such officer from his office, and is hereby declared to be a misdemeanor in office, within the meaning of the constitution of this state; and for any such misdemeanor in office, the governor, lieutenant-governor, or other officer mentioned in said section eighteen of article four of the constitution, is liable to impeachment. For any such misdemeanor in office committed by a member of the senate or assembly of this state, with the concurrence of two thirds of the members

elected, such member may be expelled.
ing is against the incumbent of an office
under the laws of this state, other th
senate or assembly, or governor or
or other officer liable to impeachme
from or deprive him of his office for
travention of the provisions of this act,
sections seven hundred and fifty-eight to seven
and seventy-two, both inclusive, of the Penal Code of the state of California shall be applicable to such proceedings.

Sec. 13. Where, upon the trial of any action or proceeding under the provisions of this act for the contesting of the right of any person declared elected to an office, or to annul and set aside such election, or to remove a person from his office, it appears from the evidence that the offense complained of was not committed by the candidate, or with his knowledge or consent, or was committed without his sanction or connivance, and that all reasonable means for preventing the commission of such offenses at such election were taken by and on behalf of the candidate, or that the offenses complained of were trivial, unimportant, and limited in character, and that in all other respects his participation in the election was free from such offenses or illegal acts, or that any act or omission of the candidate arose from inadvertence or from accidental miscalculation, or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith, and under the circumstances it seems to the court to be just that the said candidate should not forfeit his office, or be deprived of any office of which he is the incumbent, then the election of such candidate shall not, by reason of such offense or omission complained of, be void, nor shall the candidate be removed from or deprived of his office.

Sec. 14. An action to contest the right of any person declared elected to an office, or to annul and set aside such election, or to remove from or deprive any person of an office of which he is the incumbent, for any offense mentioned in this act, must, unless a different time be stated, be commenced within forty days after the return day of the election at which such offense was committed; or unless the ground of the action or proceeding is the illegal payment of money or other valuable thing subse-

and he to the filing of the statement prescribed by section elecbe of this act, in which case the action or proceeding may be commenced at any time after such illegal payment. A contest of the office of governor or lieutenant-governor, or member of the senate or assembly, must be commenced within twenty days after the certificate of election is issued or the declaration of the result of the election.

Sec. 15. An application for filing a statement, payment of a claim, or correction of an error or false recital in a statement filed, or an action or proceeding to annul and set aside the election of any person declared elected to an office, or to remove or deprive any person of his office for an offense mentioned in this act, must be made to or commenced in the superior court of the county in which the certificate of his nomination as a candidate for the office to which he is declared elected or is the incumbent is filed, or would be filed, under any law enacted subsequent to the first day of January, eighteen hundred and ninety-one, had such law been in force at the time he was a candidate.

Sec. 16. A candidate elected to an office, and whose election thereto has been annulled and set aside for any offense mentioned in this act, shall not, during the period fixed by law as the term of such office, be appointed to fill any vacancy which may occur in such office. A candidate or other person who is removed from or deprived of his office for any offense mentioned in this act shall not, during the period remaining as the unexpired term of such office, or during the period fixed by law as the next ensuing term of such office, be appointed to fill any vacancy which may occur in such office. Any appointment to an office made in violation of or contrary to the provisions of this section shall be void.

Sec. 17. Every offense mentioned in this act which is punishable by imprisonment in the state prison is hereby declared to be an infamous crime, and when any person is convicted of an offense herein declared to be an infamous crime, he shall, in addition to the punishment prescribed by the laws of this state for such offense, be excluded from the right of suffrage after such conviction; and it shall be the duty of the county clerk of the county

in which any such conviction shall be had to transmit a certified copy of the record of conviction to the clerk of each county of the state within ten days thereafter, which said certified copy shall be duly filed by the said county clerks in their respective offices, and a record of such must be made, and such record shall be a public record, and open to the inspection of any citizen.

Sec. 18. If the district attorney of the county shall be notified by any officer or other person of any violation of any of the provisions of this act, it shall be his duty forthwith to diligently inquire into the facts of such violation, and if there is reasonable ground for instituting a prosecution, it shall be the duty of such district attorney to file a complaint or accusation, in writing, before a court of competent jurisdiction, charging the accused person of such offense, and shall verify such complaint by affidavit; but it shall be sufficient to state in such affidavit that he believes the facts stated in such complaint to be true. If any district attorney shall fail or refuse to faithfully perform any duty imposed upon him by this act, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall forfeit his office. It shall be the duty of the district attorney, under penalty of forfeiture of his office, to prosecute any and all persons guilty of any violation of the provisions of this act, the penalty of which is fine or imprisonment, or both, or removal from office. Any citizen may employ an attorney to assist the district attorney to perform his duties under this act, and such attorney shall be recognized by the district attorney and the court as associate counsel in the proceeding; and no prosecution, action, or proceeding shall be dismissed without notice to, or against the objection of, such associate counsel until the reasons of the district attorney for such dismissal, together with the objections thereto of said associate counsel, shall have been filed in writing, argued by counsel, and fully considered by the court, with such limitation as to the time of filing such reasons and objections as the court may impose.

Sec. 19. It shall be unlawful for any person, directly or indirectly, by himself or through any other person,—

1. To pay, lend, or contribute, or offer or promise to pay, lend, or contribute, any money or other valuable

See next page

consideration, to or for any voter, or to or for any other person, to induce such voter to vote or refrain from voting at any election, or to induce any voter to vote or refrain from voting at such election, for any particular person or persons, or to induce such voter to come to the polls or remain away from the polls at such election, or on account of such voter having voted or refrained from voting, or having voted or refrained from voting for any particular person, or having come to the polls or remained away from the polls, at such election.

2. To give, offer, or promise any office, place, or employment, or to promise to procure, or endeavor to procure, any office, place, or employment, to or for any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting at any election, or to induce any voter to vote or refrain from voting at such election for any particular person or persons.

3. To make any gift, loan, promise, offer, procurement, or agreement, as aforesaid, to, for, or with any person, in order to induce such person to procure, or endeavor to procure, the election of any person, or the vote of any voter at any election.

4. To procure, or engage, promise, or endeavor to procure, in consequence of any such gift, loan, offer, promise, procurement, or agreement, the election of any person, or the vote of any voter at such election.

5. To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that the same, or any part thereof, shall be used in bribery at any election; or to knowingly pay, or cause to be paid, any money, or other valuable thing, to any person in discharge or repayment of any money, wholly or in part, expended in bribery at any election.

6. To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that the same, or any part thereof, shall be used for boarding, lodging, or maintaining a person at any place or domicile in any election precinct, or ward, or district, with intent to secure the vote of such person, or to induce such person to vote for any particular person or persons at any election.

7. To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that the same, or any part thereof, shall be used to aid or assist any person to evade arrest who is charged with the commission of a crime against the elective franchise, for which, if the person were convicted, the punishment would be imprisonment in the state prison.

8. To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, in consideration of being selected or indorsed as the candidate of any convention, organized assemblage of delegates, or other body, representing, or claiming to represent, a political party or principle, or any club, society, or association, for a public office, or in consideration of the selection or indorsement of any other person as a candidate for public office, or in consideration of any member of a convention, club, society, or association having voted to select or indorse any person as a candidate for a public office, except that a candidate for nomination to a public office may contribute such proportion of the cost and expense of holding a primary election as is authorized by the Political Code of this state, and no more.

9. To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, in consideration of a person withdrawing as a candidate for a public office.

Every person who commits any of the offenses mentioned in this section is punishable, upon conviction thereof, by imprisonment in the state prison for not less than one year nor more than seven years.

Sec. 20. It shall be unlawful for any person, directly or indirectly, by himself, or through any other person,—

1. To receive, agree, or contract for, before or during an election, any money, gift, loan, or other valuable consideration, office, place, or employment, for himself or any other person, for voting or agreeing to vote, or for coming or agreeing to come to the polls, or for refraining or agreeing to refrain from voting, or for voting or agreeing to vote, or refraining or agreeing to refrain from voting, for any particular person or persons at any election.

2. To receive any money or other valuable thing, during or after an election, on account of himself or any other person having voted or refrained from voting, for any particular person or persons at such election, or on account of himself or any other person having come to the polls or remained away from the polls at such election, or on account of having induced any other person to vote or refrain from voting, or to vote or refrain from voting for any particular person or persons, or to come to or remain away from the polls, at such election.

3. To receive any money or other valuable thing, before, during, or after election, on account of himself or any other person having voted to secure the election or indorsement of any other person as the nominee or candidate of any convention, organized assemblage of delegates, or other body representing, or claiming to represent, a political party or principle, or any club, society, or association, or on account of himself or any other person having aided in securing the selection or indorsement of any other person as a nominee or candidate as aforesaid.

Every person who commits any of the offenses mentioned in this section is punishable, upon conviction, by imprisonment in the state prison for not less than one nor more than seven years.

Sec. 21. Every person who willfully causes, procures, or allows himself to be registered in the precinct register or great register of any county or city and county, knowing himself not to be entitled to such registration, is punishable by imprisonment in the state prison for not less than one nor more than three years.

Sec. 22. Every person who willfully causes, procures, or allows any other person to be registered in the precinct register or great register of any county, or city and county, knowing such person not to be entitled to such registration, is punishable by imprisonment in the state prison for not less than one year nor more than three years.

Sec. 23. Every person not entitled to vote who fraudulently votes, and every person who votes more than once, at any one election; or knowingly hands in two or more tickets folded together, or changes any ballot after the

same has been deposited in the ballot-box, or adds, or attempts to add, any ballot to those legally polled at any election, either by fraudulently introducing the same into the ballot-box before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with, the ballots lawfully polled, other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election; or carries away or destroys, or attempts to carry away or destroy, any poll list, or ballots, or ballot-box for the purpose of breaking up or invalidating such election; or willfully retains, mutilates, or destroys any election returns; or in any manner so interferes with the officers holding such election or conducting such canvass, or with the voters lawfully exercising their rights of voting at such election, as to prevent such election or canvass from being fairly had and lawfully conducted,—is punishable by imprisonment in the state prison for not less than two nor more than seven years.

Sec. 24. Every person not entitled to vote who fraudulently attempts to vote, or who, being entitled to vote, attempts to vote more than once, at any election, or who personates or attempts to personate a person legally entitled to vote, is punishable by imprisonment in the state prison for not less than one nor more than two years.

Sec. 25. Every person who gives or offers a bribe to any officer or member of any legislative caucus, political convention, committee, primary election, or political gathering of any kind, held for the purpose of nominating candidates for offices of honor, trust, or profit in this state, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than to another, and every person, member of either of the bodies in this section mentioned, who receives or offers to receive any such bribe, is punishable by imprisonment in the state prison for not less than one nor more than seven years.

Sec. 26. Every officer or clerk of election who aids in changing or destroying any poll list or official ballot, or in placing any ballots in the ballot-box, or in taking any therefrom, or adds, or attempts to add, any ballots to those legally polled at such election, either by fraudu-

lently introducing the same into the ballot-box before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with, the ballots polled, any other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election, or allows another to do so, when in his power to prevent it, or carries away or destroys, or knowingly allows another to carry away or destroy, any poll list, ballots, ballot-box, or ballots lawfully polled, is punishable by imprisonment in the state prison for not less than two nor more than seven years.

Sec. 27. Every person who forges or counterfeits returns of an election purporting to have been held at a precinct, town, or ward where no election was in fact held, or willfully substitutes forged or counterfeit returns of election in the place of true returns for a precinct, town, or ward where an election was actually held, is punishable by imprisonment in the state prison for a term not less than two nor more than seven years. Every person who willfully adds to or subtracts from the votes actually cast at an election, in any official or unofficial returns, or who alters such returns, is punishable by imprisonment in the state prison for not less than one nor more than five years.

Sec. 28. Every person who aids, assists, counsels, or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote, or who aids or abets in the commission of any of the offenses mentioned in the preceding sections, is punishable by imprisonment in the state prison not exceeding two years.

Sec. 29. Every person charged with the performance of any duty under the provisions of any law of this state relating to elections, who willfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, is, unless a different punishment for such acts or omissions is prescribed by the code of this state, punishable by fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or by both.

Sec. 30. Every person who, being a member of the

committee selected as prescribed in section one of this act, or a candidate for a public office at an election, makes and files any false statement of moneys received and expended on account of or in respect of the conduct and management of the election in reference to which such statement is filed, is guilty of perjury, and is punishable by imprisonment in the state prison for not less than one year nor more than seven years.

Sec. 31. Every person who signs or presents for filing a certificate as prescribed by section one of this act, which contains the name of a fictitious person, or the name of any person other than those actually selected to perform the duties required of the committee to be selected under the provisions of section one of this act, or who practices any fraud, device, or artifice to conceal the true names of the persons actually charged with the duties belonging to the said committee, is punishable, upon conviction, by imprisonment in the state prison for not less than one year nor more than seven years.

Sec. 32. A person offending against any provision of sections nineteen, twenty, twenty-one, twenty-two, twenty-five, twenty-six, twenty-seven, twenty-eight, thirty, and thirty-one of this act is a competent witness against another person so offending, and may be compelled to attend and testify upon any trial, hearing, proceeding, or lawful investigation, or judicial proceeding, in the same manner as any other person. But the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying. A person so testifying shall not thereafter be liable to indictment or presentment by information, nor to prosecution or punishment for the offense with reference to which his testimony was given, and may plead or prove the giving of testimony accordingly in bar of such indictment, information, or prosecution. 1905 93

Sec. 33. It shall be unlawful for any candidate for public office, before or during an election, to make any bet or wager with a voter, or take a share or interest in or in any manner become a party to such bet or wager, or provide, or agree to provide, any money to be used by another in making such bet or wager, upon any event or contingency whatever. Nor shall it be lawful for any

Secs 19 to 33 inclusive repealed as to apply to primary elections 1911-27

person, directly or indirectly, to make a bet or wager with a voter, depending upon the result of any election, with the intent thereby to procure the challenge of such voter, or to prevent him from voting at such election. Every person who commits any of the offenses mentioned in this section is guilty of a misdemeanor.

Sec. 34. Every candidate for a public office who refuses or neglects to file a statement, as prescribed in section three of this act, is guilty of a misdemeanor.

Sec. 35. Every member of a committee selected under the provisions of section one of this act who refuses or neglects to file a statement, as prescribed by section two of this act, is guilty of a misdemeanor.

Sec. 36. Every person who advances or pays, or causes to be paid, any money or other valuable thing, in contravention of sections eight or nine of this act, unless a different penalty is provided for such illegal payment, is guilty of a misdemeanor.

Sec. 37. Every candidate who makes any payment in aid of his election, or in the conduct and management of an election, in excess of the sum authorized or permitted to be expended by this act, or contrary to or in violation of sections five or six of this act, is guilty of a misdemeanor, unless a different penalty is provided for such illegal payment; each payment so made contrary to or in violation of said sections five or six of this act shall constitute a separate and distinct offense.

Sec. 38. Every member of a committee selected under the provisions of section one of this act who makes any payment contrary to or in violation of the provisions of sections five or six of this act, unless a different penalty is provided for such illegal payment, is guilty of a misdemeanor.

Sec. 39. Every person who, either before or during an election, directly or indirectly, gives or provides, or pays, wholly or in part, the expense of giving or providing any meat, drink, refreshment, entertainment, or provision to or for any person, for the purpose of corruptly influencing that person, or any other person, to give or refrain from giving his vote at an election, or to come to the polls or remain away from the polls, or on account of such person or any other person having voted or re-

[illegible] 38 to 42 Expended so as to [illegible]
[illegible] Law - 1905 [illegible]

frained from voting, or having come
mained away from the polls, or bein
refrain from voting, at such election
demeanor.

Sec. 40. Every person who sets
set up, or otherwise exhibits, in a
the registration of voters for the receiv
election, or for the counting of votes cast at a
any box or other receptacle for the deposit of money,
who solicits the giving or depositing of any money, for
the purpose of providing any drink, refreshment, or entertainment to or for any person employed in or about
the registration of voters, or the polling of votes, or the
counting of votes cast at an election, or who gives or
provides any moneys as aforesaid, is guilty of a misdemeanor.

Sec. 41. It shall be unlawful for any person, directly
or indirectly, by himself, or any other person in his behalf, to make use of, or threaten to make use of, any
force, violence, or restraint, or to inflict or threaten the
infliction, by himself, or through any other person, of
any injury, damage, harm, or loss, or in any manner to
practice intimidation upon or against any person, in
order to induce or compel such person to vote or refrain
from voting at any election, or to vote or refrain
from voting for any particular person or persons at any
election, or on account of such person or persons at any
election, or on account of such person having voted or
refrained from voting at any election. And it shall be
unlawful for any person, by abduction, duress, or any
forcible or fraudulent device or contrivance whatever, to
impede, prevent, or otherwise interfere with the free
exercise of the elective franchise by any voter; or to
compel, induce, or prevail upon any voter either to give or
refrain from giving his vote at any election, or to give
or refrain from giving his vote for any particular person
or persons at any election. It shall not be lawful for any
employer, in paying his employees the salary or wages
due them, to inclose their pay in "pay-envelopes" upon
which there is written or printed the name of any candidate, or any political mottoes, devices, or arguments containing treats, express or implied, intended or calculated
to influence the political opinions or actions of such em-

person. Nor shall it be lawful for any employer, within days of an election, to put up or otherwise exhibit within his factory, workshop, or other establishment or place where his workmen or employees may be working, any handbill, or placard containing any threat, notice, or information, that in case any particular ticket of a political party, or organization, or candidate shall be elected, work in his place or establishment will cease, in whole or in part, or his place or establishment be closed up, or the salaries or wages of his workmen or employees be reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his workmen or employees. This section shall apply to corporations as well as individuals, and any person or corporation violating the provisions of this section is guilty of a misdemeanor, and any corporation violating this section shall forfeit its charter.

Sec. 42. Every inspector, judge, or clerk of an election who, previous to putting the ballot of an elector in the ballot-box, attempts to find out any name on such ballot, or who opens or suffers the folded ballot of any elector which has been handed in to be opened or examined previous to putting the same into the ballot-box, or who makes or places any mark or device on any folded ballot with the view to ascertain the name of any person for whom the elector has voted, or who, without the consent of the elector, discloses the name of any person which such inspector, judge, or clerk has fraudulently or illegally discovered to have been voted for by such elector, is punishable by fine not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days or more than six months, or by both such fine and imprisonment.

Sec. 43. Other crimes against the elective franchise are defined, and the punishment thereof prescribed, by the Penal Code relating to the subject, and by special statutes.

Sec. 44. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 45. This act shall take effect and be in force from and after its passage.

An act concerning special elections.

[Approved February, 9; 1878; 1877-8, 73.]

Ward registers to be used.

Section 1. At any special election to be held in any county, except in the city and county of San Francisco, copies of the great register of such county, and in the city and county of San Francisco copies of the ward registers of said city and county, which were printed before and used at the next preceding general election shall be used.

Board of supervisors to furnish registers.

Sec. 2. Before the day on which said special election is appointed to be held, the board of supervisors of the county, except the city and county of San Francisco, must furnish the board of election of each precinct in the county at least one copy of the aforesaid printed great register; and the board of supervisors of the city and county of San Francisco must furnish the board of election of each precinct in the county at least one copy of the ward register of the ward in which the precinct is located. If the board cannot otherwise obtain a sufficient number of copies of the register for the purpose, it must take the copies filed in the office of the county clerk, in pursuance of section twelve hundred and sixty-eight of the Political Code.

Letter "V" to be used.

Sec. 3. If the copy of the register which shall be furnished to any precinct shall have been used at a previous election, the letter "V" may be used instead of the word "Voted," as required by section twelve hundred and twenty-eight of the Political Code.

Posting copies of great register.

Sec. 4. It shall not be the duty of the board of election to post copies of the great register, as required by section eleven hundred and forty-nine of the Political Code.

Voter not required to give number.

Sec. 5. The voter, when he offers his ballot at a polling-place, shall not be required to announce his number on the great register, as provided for in section twelve hundred and twenty-five of the Political Code.

Sec. 6. This act shall take effect immediately.

Of this act the code commissioners say: "Not repealed, but not applicable to existing laws, as there is now no great register." As to cities: See 1899, 63.

An act providing for general primary elections within the state of California, and to promote the purity thereof by regulating the conduct thereof, and to support the privileges of free suffrage thereat, by prohibiting certain acts and practices in relation thereto, and providing for the punishment thereof, and for other purposes.

[Statute approved March 13, 1897; Stats. 1897, p. 115.]

Unconstitutional: Spier v. Baker, 120 Cal. 370.

An act creating a state commission on voting or balloting machines, defining their powers, and providing for the use at the option of indicated local authorities of voting or ballot machines for receiving and registering the vote in one or more precincts of any county, or city and county, city or town, at any or all elections held therein, and for ascertaining the result at such elections; and providing for the punishment of all violations of the provisions of this act.

[Approved March 20, 1903; Stats. 1903, 262.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. 1. The governor, secretary of state and attorney-general, and their successors in office are hereby created and constituted the state commission on voting or ballot machines. It shall be the duty of said commissioners to examine all voting or ballot machines which may be offered for their inspection in order to determine whether such machines comply with the requirements of this act, and can safely be used by voters at elections under the provisions of this act; and no machine or machines shall be provided by the board of supervisors, or other board having charge and control of elections in each of the counties, and cities and counties, cities or towns of the state, unless the said machine or machines shall have received the approval of a majority of said commission as herein provided.

2. Any machine or machines which shall have the ap-

proval of a majority of said commission may be provided for use at elections by the boards authorized so to do under the provisions of this act. The report of said commission on each and every kind of voting or ballot machine shall be filed with the secretary of state within thirty days after their examination of said machines, and the secretary of state must within five days after the filing of any report approving any machine or machines, transmit to the boards of supervisors or other boards having charge and control of elections in each of the counties and cities and counties, cities or towns of the state, a list of the machines so approved.

3. No machine or machines shall be used unless such machine or machines shall have received the approval of the state commission at least ninety days prior to any election at which such machine or machines are to be used.

4. For carrying out the provisions of this act the members of the state commission under this act shall be allowed their actual necessary expenses.

Sec. 2. The board of supervisors, or other board having charge and control of elections in each of the counties, and cities and counties, cities or towns of the state, may at any regular meeting, or at any special meeting called for the purpose, provide for and require the use of a voting or ballot machine, or machines for receiving and registering the vote at any or all elections held in such county, city and county, city or town, respectively, or in any one or more precincts thereof, and every such board of supervisors, or other board having charge and control of elections in each of the counties, and cities and counties, cities or towns of the state, may determine upon and require the use of voting or ballot machines at any and all elections to be held within such county, city and county, city or town of the state, or in one or more precincts thereof, and thereupon the voting or ballot machine or machines so determined upon and required shall be used in voting for all public officers to be voted for by the voters of such counties, cities and counties, cities or towns of the state, or in the precinct or precincts thereof, for which the same shall have been so determined upon and required, and also in voting upon all amendments to the constitution, and upon all laws or propositions or

questions which may be lawfully submitted to such voters, and for receiving and registering the votes cast at any and every such election.

Sec. 3. In purchasing the necessary voting or ballot machines to be used at elections, as herein provided, the boards of supervisors of the several counties, and the legislative bodies of the incorporated cities and towns therein, may, by agreement, entered into by said board of supervisors and the legislative body of any incorporated city or town in such county, provide for the joint purchase and subsequent ownership thereof, and for the care, maintenance and use of the same.

Sec. 4. No voting or ballot machine shall be approved by the said board unless the same be so constructed as to provide facilities for voting for the candidates of as many different parties or organizations as may make nominations for office and for and against as many different propositions or amendments as may be submitted; nor shall any such machine be approved unless the same will permit a voter to vote for any person for any office; it must enable the voter to vote and select a ticket all from the nominees of one party or a ticket selected in part from the nominees of one party and in part from the nominees of any or all other parties, and in part from independent nominations, or in part or in whole of the names of persons not nominated by any party or upon any independent ticket; such machines must also secure to the voter privacy and secrecy in the act of voting; such machines must also be so constructed that a voter cannot vote for a candidate or a proposition or amendment for whom or on which he is not lawfully entitled to vote, also to prevent voting for more than one person for the same office, except in cases where the voter is lawfully entitled to vote for more than one person for the same office, in which event they must enable the voter to vote for as many persons for that office as he is by law entitled to vote, and no more; they must also prevent his voting more than once for the same person for the same office; and allow of his reversing his vote in case of mistake or desire to change; and such machines must be so constructed that all votes cast for any person voted for, or for or against any proposition or amendment submitted to the voters shall be accurately registered or recorded, and

any machine to be approved by said board must be of such kind, style or pattern as will permit the exercise by each voter of the full right and privilege of his elective franchise under the constitution and laws of this state.

Sec. 5. The board of supervisors or other board having charge and control of elections adopting a voting or ballot machine shall, as soon as practicable thereafter, provide for such polling-place or places, as they may determine, one or more voting machines in complete working order and also such other accessories as may be required for the practical working of the machine and shall thereafter preserve and keep the machines in repair, and shall have the custody of the furniture and equipment. If it shall be impracticable to supply each and every election district with a voting or ballot machine or machines at any election following such adoption, as many may be supplied as it is practicable to procure, and the same may be used in such election precincts within the county, or city and county, city, or town, as the board having control may direct.

Sec. 6. All necessary stationery and instructions to voters shall be delivered to the boards of election of each election precinct not later than twenty-four hours next preceding the election.

Sec. 7. Tally lists shall be so prepared that the results of such election may be clearly and accurately set forth and certified to by the officers of election.

Sec. 8. The precinct boards of election of each precinct shall meet at the polling-place therein, at least one hour before the time set for the opening of the polls at each election, and shall proceed to arrange within the guard-rail the furniture, stationery, and voting or ballot machine for the conduct of the election. The inspectors of election shall then and there have the voting or ballot machine, instructions to voters, and stationery required to be delivered to them for such election. The inspectors shall thereupon cause at least two instruction cards to be posted conspicuously within the polling-place. If not previously done, they shall adjust the voting or ballot machine so as to record and register the votes to be cast at such election, and adjust the registering and recording device of such machine so as to start at zero, and the same shall be

subject to the inspection of the public before the opening of the polls.

Sec. 9. The exterior of the voting or ballot machine and every part of the polling-place shall be in plain view of the election officers and public. The voting or ballot machines shall be placed at least three feet from every wall and partition of the polling-place, and at least three feet from the guard-rail. A guard-rail shall be constructed at least three feet from the machine, with openings to admit electors or officers of election to and from the machine.

Sec. 10. After the opening of the polls, the inspectors shall not allow any voter to pass within the guard-rail until they ascertain that he is duly entitled to vote. The operation of voting by an elector while voting shall be secret and obscured from all other persons, except as provided in cases of voting by assisted electors. No voter shall remain within the voting or ballot machine booth longer than two minutes, and if he shall refuse to leave it after the lapse of two minutes he may be removed by the inspectors.

Sec. 11. As soon as the polls of the election are closed the inspectors of election thereat shall immediately lock the voting or ballot machine against voting, and, in the presence and full view of the public who may be lawfully within the polling-place, proceed to demonstrate and declare the result of such election as registered or recorded or received by the machine. As such result is so ascertained and declared the clerks shall record it and at its completion, submit their records to the inspectors and judges for examination, and if found to be correct the inspectors shall at once announce the same, and make returns as provided by law.

Sec. 12. The inspectors of election shall, as soon as the result is fully ascertained and declared, as in the preceding section required, lock the machine so that the record of each election shall be preserved for the period of six months following such election, except in cases where the machine is required for use in a subsequent election during such period, in which case the board of supervisors or other board having charge and control of elections shall inspect the registering or recording and receiving device of the machines and file a report of said inspection with

the county clerk or registrar of voters. Said report of said board when so certified and filed shall be prima facie evidence of the vote at such election. Any supplementary or duplicate record of an election, which may be furnished by a machine, shall be preserved by the county clerk or registrar of voters for one year following such election.

Sec. 13. The provisions of the law relating to misconduct at elections shall apply to elections with voting or ballot machines.

Sec. 14. For any election in any county, city and county, city or town, in which voting or ballot machines are to be used, the election precincts in which such machines are to be used may be created by the officers charged with the duty of creating election precincts, so as to contain not to exceed six hundred votes each.

Sec. 15. The list of candidates used or to be used on the voting or ballot machine shall be deemed an official ballot under this act for an election precinct in which a voting or ballot machine is used, pursuant to law. The word "ballot" as used in this act, (except when reference is made to independent ballots) means that portion of the cardboard, or paper, or other material within the ballot frames, containing the name of the candidate for office, or a statement of a proposed constitutional amendment, or other question or proposition with the word "for" or the word "against," or "yes" or "no."

Sec. 16. The provisions of section eleven hundred and forty-two of the Political Code shall apply where voting or ballot machines are used.

Sec. 17. All laws and parts of laws of this state relating to elections and prescribing the powers and duties of election officers, shall, so far as applicable to the use of voting or ballot machines, remain in full force and effect; and all laws and parts of laws inconsistent herewith, shall not be applicable in each county, city and county, city or town election precinct wherein such voting or ballot machines are used, pursuant to this act, so long as such voting or ballot machine or machines shall be used therein, and nothing in this act contained shall be construed as repealing any existing law or authorizing any deviation or omission therefrom, except as provided for or set forth herein.

Sec. 18. Any willful violation of any provision of this act or any willful injury to any voting or ballot machine tending to injure its effectiveness or to change the true expression given by the voters at any election shall be a felony and punishable as such, in accordance with the provisions of the Penal Code of the state.

Sec. 19. This act shall take effect immediately.

An act providing for a general primary election in counties of certain classes within the state of California, and to promote the purity thereof by regulating the conduct thereof, and to support the privileges of free suffrage thereat, by prohibiting certain acts and practices in relation thereto, and providing for the punishment thereof.

[Act approved March 27, 1895; Stats. 1895, p. 207; in effect immediately.]

This was the former act relating to primary elections, which was held unconstitutional in Marsh v. Hanly, 111 Cal. 367.

An act to prohibit "Piece Clubs," and to prevent extortion from candidates for office.

[Approved March 14, 1878; Stats. 1877-8, p. 236.]

The code commissioners say of this act that it is modified, if not repealed, by the Purity of Election Law.

FIRE DEPARTMENT.

An act to amend an act to allow unincorporated towns and villages to equip and maintain a fire department, and to assess and collect taxes, from time to time, for such purpose, and to create a board of fire commissioners (approved March 4, 1881; Stats. 1881, p. 26), relating to assessing and collecting said taxes.

[Approved March 6, 1899; Stats. 1899, p. 69.]

The act of 1881 was amended entirely by this act.

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. Section one of "An act to amend an act to allow unincorporated towns and villages to equip and maintain a fire department, and to assess and collect taxes

from time to time for such purpose, and to create a board of fire commissioners" (approved March fourth, eighteen hundred and eighty-one), is hereby amended to read as follows:

Section 1. Any unincorporated town or village of this state may equip and maintain a fire department for the purpose of protecting property from destruction by fire.

Sec. 2. Upon the application, by petition, of fifty or more taxpayers and residents of said town or village to the board of supervisors of the county in which said town or village is situated, the said board of supervisors shall appoint three commissioners, to be known as and called a board of fire commissioners, of the town or village for which they are appointed, who shall hold their office until the second Monday in April next thereafter, and until their successors are elected and qualified.

Sec. 3. The board of fire commissioners so appointed by said board of supervisors, and their successors, shall be authorized and empowered, and it shall be their duty:

1. To fix and establish the fire limits of said town or village, and shall accurately describe the same, in writing by metes and bounds and file a copy thereof, subscribed by them, in the office of the county recorder of the county in which said town or village is situated;

2. To make all contracts with water companies for a supply of water, and attaching hydrants or fire plugs to the pipes, or conduits, or cisterns of such water company; to make contracts for and to purchase the engines, hose, hose carts or carriages, and other appliances for the full equipment of a fire company or department.

3. To call an election and submit to the electors residing within the fire limits fixed by them, the question whether a tax shall be levied and raised for the purpose of establishing and maintaining a fire department for the said town, or village, and for protecting the same from loss by fire;

4. To appoint judges, not less than three, and other officers, to conduct such election, and to issue certificates of election;

5. To do and perform such other acts and things as may be proper and necessary to carry out the full intent and meaning of this act.

Sec. 4. Said election must be called by posting notices in three of the most public places in said town or village, for not less than ten days, and also, if there is a newspaper printed and published in the town or village, by advertising such notice therein at least two regular issues of the paper.

Sec. 5. Such notice must specify the time and place of holding the election, and the amount required for each specific purpose, and the amount of money to be raised shall not exceed in any one year one per cent of the assessable property within the fire limits, as fixed by the board of fire commissioners; provided, that after the first year the amount so raised shall not exceed one half of one per cent.

Sec. 6. The board of fire commissioners must appoint three judges and two clerks to conduct the election, and it must be held in all respects as nearly as practicable in conformity with the general election law; provided, that no new register shall be required, nor legal ballot paper; and provided, further, that the polls may be opened at eight o'clock A. M. and close at five o'clock P. M. on the day appointed for such election.

Sec. 7. At such election the ballots must contain the words "Tax—Yes" or "Tax—No."

Sec. 8. The judges of election shall, within twenty-four hours after holding said election, make returns and certify said votes, and the names of the person or persons voted for, to the said board of fire commissioners, and within five days after the returns have been received by the board of fire commissioners they shall count the votes, determine who has been elected, and forthwith issue certificates of election to the persons elected.

Sec. 9. The board of supervisors must, at the time of levying the county taxes, levy a tax upon all the taxable property within the fire limits of the unincorporated town or village voting such tax sufficient to raise the amount voted. The rate of taxation shall be ascertained by deducting fifteen per cent for anticipated delinquencies from the aggregate assessed value of the property in the district, as it appears on the assessment roll of the county, and then dividing the sum voted by the remainder of such aggregate assessed value. The taxes so levied shall be

computed and entered on the assessment roll of the county auditor, and collected at the same time and in the same manner as state and county taxes; and when collected shall be paid into the county treasury for the use of the district in which the tax was voted.

Sec. 10. All moneys arising from the tax herein authorized to be levied and collected shall be kept by the treasurer of the county in which said town or village is situated, subject only to the order of said board of fire commissioners of said town or village voting said tax.

Sec. 11. The treasurer shall receive no compensation for the receipt and disbursement of moneys derived under the provisions of this act.

Sec. 12. The board of fire commissioners are hereby directed and empowered to make all necessary arrangements for the purchase of rights of making connections with the pipes of water companies for fire-plugs or hydrants, in such part of the town or village as they shall deem best for the common interest, and also for purchasing fire-hose and carriages, subject, however, to the provisions hereinbefore contained.

Sec. 13. They shall procure all necessary books and blanks for the purpose of keeping a correct record of their proceedings; and they shall keep a record of all their acts, of all moneys received and disbursed by them, which said books shall be open to public inspection at all times.

Sec. 14. All accounts, bills, and demands against the fire department shall be audited, allowed, and paid by the board of fire commissioners by warrants drawn on the county treasurer, and the county treasurer shall pay the same in the order in which they are presented.

Sec. 15. The board of fire commissioners shall, from time to time, and in like manner, submit to a vote of the electors of said town, or village, the propriety of levying and raising an additional tax for keeping in repair the apparatus of said fire department, and maintaining the same in good order and condition.

Sec. 16. No officer or officers created by this act shall receive any compensation for his or their services.

Sec. 17. In case of a vacancy of any or all of the members of the board of fire commissioners, after election had, by death, resignation, or otherwise, such vacancy

shall be filled by appointment by the board of supervisors of the county in which said vacancy may happen.

Sec. 18. That in case an election be had under the provisions of this bill, and the electors, by vote, shall decline to equip and maintain a fire department, and refuse to levy and collect a tax for that purpose, no other election shall be called or held under this act within one year next thereafter.

Sec. 19. An election shall be held anntually, on the first Monday of April, for the election of three fire commissioners, who shall take their office on the next succeeding Monday in the same month; and it shall be the duty of the board of fire commissioners to give notice of such elections by posting notices thereof in three public places in the town, for at least two weeks before the day of election. They shall also appoint the judges of election.

Sec. 20. Each board of fire commissioners shall at the expiration of their term of office, turn over to their successors all the books and documents belonging to the office of said board of fire commissioners, taking their receipt for the same.

Sec. 21. No assessment or act relating to assessment or collection of taxes, or elections held under the provisions of this act, shall be illegal, void, or voidable on account of any error, omission, or informality, or failure to comply strictly with the provisions of this act, nor on account of any misnomer; but the same shall be liberally construed, with a view to hold valid all acts done under this act.

Sec. 22. The said board of fire commissioners may regulate the construction of, and order the suspension, discontinuance, removal, repair, or cleaning of, fire-places, chimneys, stoves and stovepipes, flues, ovens, boilers, kettles, forges or any apparatus used in any building, manufactory, or business which may be dangerous in causing or promoting fires, and prescribe limits within which no dangerous nor obnoxious and offensive business may be carried on.

Sec. 23. They may adopt such ordinance, within the purview of the preceding section, as they may deem proper to prevent fires and conflagrations, and for the protection of property at and during the pendency of any fire, and

for that purpose may provide that at and during the pendency of any fire the officers of the fire company or companies present shall be vested with police powers. Such ordinances shall be signed by the said fire commissioners, and published in a newspaper printed in said town or village, or posted in three of the most public places thereof, for the period of two weeks, at the end of which time it shall be and become a law for the government of the inhabitants of said town or village.

Sec. 24. Any person who shall violate any of the provisions of said ordinance shall be guilty of a misdemeanor.

Sec. 25. Any justice of the peace within the townships within which said town or village is situated shall have jurisdiction of all prosecutions under this act, and sections fourteen hundred and twenty-six to fourteen hundred and forty-nine, both inclusive, title nine, chapter one, of the Penal Code, are hereby made applicable to proceedings under this act.

Section 2. All acts or parts of acts, so far as they do conflict with the provisions hereof, are hereby repealed.

Section 3. This act shall take effect and be in force from and after its passage.

An act authorizing and requiring boards or commissions having the management and control of paid fire departments, to grant the members thereof yearly vacations.

[Act approved March 26, 1895; Stats. 1895, p. 76. Amended 1899, 57.]

The people of the state of California, represented in senate and assembly, do enact as follows: 1905 39

Section 1. In every city, or city and county, of this state, where there is a regularly organized paid fire department, the board of supervisors, common council, commissions, or other body having the management and control of the same, are authorized and required, once in every year, to provide for each regular or permanent member thereof, a leave of absence, from active duty, of not less than five nor more than ten days in each year, and in addition thereto a leave of absence from active duty of two days in every month of such service. Leaves of absence so granted, as aforesaid, must be arranged by

said board or commission so as not to interfere with or in any way impair the efficiency of the said department. No deduction must be made from the salary or pay of any member of such fire department granted such leaves of absence under the provisions of this act. [Became a law, under constitutional provision, without the governor's approval, March 4, 1899; Stats. 1899, 57.]

Sec. 2. This act shall take effect immediately.

An act to authorize the board of supervisors or other governing authority of the several counties, cities and counties, cities, and towns of the state to provide pensions or benefits for the relief of aged, infirm, or disabled firemen.

[Approved March 11, 1889; 1889, 108. Am'd. 1901, 575.]

Section 1. The board of supervisors, or other governing authority of the several counties, cities and counties, cities and towns of the state in which fire departments exist, shall, upon the written petition of a majority of the lawfully registered electors of any such political division respectively, by appropriate ordinances, provide a fund by general tax upon the property of the county, city and county, city, or town, for the relief of aged, infirm, or disabled firemen; provided, that such disability shall be caused by exposure while in the discharge of such duty. [Amendment approved March 23, 1901; Stats. 1901, 575.]

Sec. 2. No person shall be entitled to any benefits from any fund created by authority of this act, unless he shall have served as an active member in the fire department of such county, city and county, city, or town, at least fifteen years, and any person having served in the fire department of such county, city and county, city, or town, at least fifteen years, may make application to be placed on the retired list of such fire department, and he shall receive the sum of not more than twenty-five (25) dollars and not less than fifteen (15) dollars per month, to be paid out of said fund, and those members of a fire department who have been paid a stipulated salary, having served fifteen years in such fire department, shall receive an amount equal to one half of the salary provided by law at the time of such retirement; provided, that any person injured in the actual discharge of fire duty shall be entitled to the benefits of this act regardless of his length of

service in the fire department of any such county, city and county, city, or town. [Amendment approved March 23, 1901; Stats. 1901, 575.]

Sec. 3. This act shall take effect from and after its passage.

An act to create an exempt firemen's relief fund in the several counties, cities and counties, cities, and towns of the state, and relating to the enrollment, formation into fire companies, and services as firemen of such exempt firemen.

[Statute approved March 26, 1895; Stats. 1895, p. 107.]

Unconstitutional: Taylor v. Mott, 123 Cal. 497. Superseded: Stats. 1901, 101. See next act.

An act to create a firemen's relief, health and life insurance and pension fund in the several counties, cities and counties, and cities and towns of the state. [Stats. 1901, 101. Amended 1903, 158.]

[Became a law under constitutional provision without governor's approval, March 7, 1901.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. The chairman of the board of supervisors of the county, city and county, city or incorporated town in which there is no board of fire commissioners, the treasurer of the county, city and county, city or incorporated town, and the chief engineer of fire department, and their successors in office, are hereby constituted a board of trustees of the firemen's relief and pension fund of the fire department, to provide for the disbursement of the same and to designate the beneficiaries thereof as hereinafter directed, which board shall be known as the "Board of Firemen's Relief and Pension Fund Commissioners"; provided, however, that where there is in any county, city and county, city or town, a board of fire commissioners, then such body shall take the place of and possess the powers and perform the duties of said board of trustees of the firemen's relief and pension fund of the fire department.

Sec. 2. They shall organize as such board by choosing one of their number as chairman and by appointing a secretary. The treasurer of the county, city and county,

city or town shall be ex-officio treasurer of said fund. Such board of trustees shall have charge of and administer said fund and order payments therefrom in pursuance of the provisions of this act. They shall report annually in the month of June to the board of supervisors, or other governing authority of the county, city and county, city or incorporated town, the condition of the firemen's relief and pension fund of the fire department, and the receipts and disbursements on account of the same, with a full and complete list of the beneficiaries of said fund and the amounts paid them.

Sec. 3. Whenever any person, at the taking effect of this act, or thereafter, shall have been duly appointed, and shall have served for twenty years, or more, in the aggregate, as a member, in any capacity or rank whatever, of the regularly constituted fire department of any such county, city and county, city or town, which may hereafter be subject to the provisions of this act, said board may if it deem it to be for the good of such fire department or shall, upon the written application of such person, providing he shall have attained the age of sixty years order and direct that he be retired from further active service in such fire department, and from the date of the making of such order, the service of such person in such fire department shall cease, and such person so retired shall thereafter, during his life, be paid from such fund a monthly pension, equal to one half of the monthly salary attached to the rank which he may have held in said fire department at the date of such retirement; provided, only, that if he shall have been promoted within one year prior to the date of such retirement, then he shall receive from such fund a monthly pension equal to one half of the monthly salary he received in the rank held by him next prior to said promotion. [Amendment approved March 16, 1903; Stats. 1903, p. 158; in effect immediately.]

Sec. 4. Whenever any duly appointed member of the fire department of any such county, city and county, city or town, shall become physically disabled, by reason of any bodily injury received, and in direct consequence of, the performance or discharge of his duty as such member, said board shall, upon his written request, or without such request, if it deem it to be for the good of such fire department, and in furtherance of justice, retire said member

from said department, and order and direct that he be paid, from such fund, during such disability, a monthly pension equal to one half the monthly salary attached to the rank, which he may have held in said fire department at the time of such retirement; provided, that whenever such disability shall cease, such pension shall cease, and such person shall be restored to active service in said department with the rank he held at the date of his retirement. [Amendment approved March 16, 1903; Stats. 1903, p. 158; in effect immediately.]

Sec. 5. No person shall be retired, as provided in the next preceding section, or receive any benefit from said fund, unless there shall be filed with said board certificates of his disability, which certificates shall be subscribed and sworn to by said person, and by the county, city and county, city or town physician, if there be one, and two regularly licensed practicing physicians of such county, city and county, city or town, and such board may require other evidence of disability before ordering such retirement and payment as aforesaid.

Sec. 6. Whenever any member of the fire department of such county, city and county, city or town, shall lose his life in, and in direct consequence of, the performance of his duty as such member, or shall die from the effects of bodily injury received, and in direct consequence of the performance of such duty, leaving a widow, or child, or children, under the age of sixteen years, or a mother, or father, wholly dependent upon him for support and maintenance, then, upon satisfactory proof of such facts made to it, such board shall order and direct, that a monthly pension equal to one third the monthly salary attached to the rank which said member held in such fire department at the time of his death, shall be paid to such widow during her life, or, if there be no such widow, then to such child or children until it or they reach the age of sixteen years, and no longer, and if there be no such widow, or children, then to such dependent mother and father, or the survivor of such mother or father; provided, that if such widow die leaving surviving her any child or children of said member who are under the age of sixteen years at the time of her death, then said pension shall be paid to such child or children until they arrive at the age of sixteen years, and no longer; and provided, further, that

if such widow, or such child, or children, shall marry, or such mother or father become capable of self-support, then said person so marrying, or such mother or father so becoming capable of self-support, shall thereafter receive no further pension from such fund. [Amendment approved March 16, 1903; Stats. 1903, p. 159; in effect immediately.]

Sec. 7. Whenever any member of the fire department of such county, city and county, city or town, shall after ten years of service, die from natural causes, then his widow or children, or if there be no widow or children, then his mother or unmarried sisters, shall be entitled to the sum of one thousand dollars from such fund.

Sec. 8. Any person retired for disability under this act may be summoned before the board herein provided for at any time thereafter, and shall submit himself thereto for examination as to his fitness for duty, and shall abide the decision and order of such board with reference thereto; and all members of the fire department who may be retired under the provisions of this act, shall report to the chief of the fire department of the county, city and county, city or town where so retired on the first Mondays of April, July, October and January of each year; and in cases of great public emergency, may be assigned to and shall perform such duty as said chief of the fire department may direct; and such persons shall have no claim against the county, city and county, city or town for payment for such duty so performed.

Sec. 9. When any person who shall have received any benefit from said fund shall be convicted of any felony or shall become an habitual drunkard, or shall become a non-resident of this state or shall fail to report himself for examination for duty as required herein, unless excused by the board, or shall disobey the requirements of said board under this act, in respect to said examination or duty, then such board shall order that such pension allowance as may have been granted to such person shall immediately cease and such person shall receive no further pension allowance or benefit under this act.

Sec. 10. The board herein provided for shall hold quarterly meetings on the first Mondays of April, July, October, and January of each year and upon the call of its

president. It shall biennially select from its members a president and secretary. It shall issue warrants, signed by its president and secretary, to the persons entitled thereto, of the amount of money ordered paid to such persons from such fund by said board, which warrant shall state for what purpose such payment is to be made; it shall keep a record of all its proceedings, which record shall be a public record; it shall, at each quarterly meeting, send to the treasurer of the county, city and county, city or town, and to the auditor of such county, city and county, city or town, a written or printed list of all persons entitled to payment from the fund herein provided for, stating the amount of such payments and for what granted, which list shall be certified to and signed by the president and secretary of such board, attested under oath. The auditor shall thereupon enter a copy of said list upon a book to be kept for that purpose and which shall be known and designated as "the firemen's relief and pension fund" book. When such list has been entered by the auditor, he shall transmit the same to the board of supervisors or other governing authority of such county, city and county, city or town, which board or authority shall order the payment of the amounts named therein out of "the firemen's relief and pension fund." A majority of all the members of said board herein provided for shall constitute a quorum and have power to transact business.

Sec. 11. The board herein provided for shall, in addition to other powers herein granted, have power:

First—To compel witnesses to attend and testify before it upon all matters connected with the operation of this act, in the same manner as is or may be provided by law for the taking of testimony before notaries public; and its president, or any member of said board, may administer oaths to such witnesses.

Second—To appoint a secretary and to provide for the payment from said fund of all its necessary expenses, including secretary hire and printing; provided, that no compensation or emolument shall be paid to any member of said board for any duty required or performed under this act.

Third—To make all needful rules and regulations for its guidance, and shall make up an estimate every year

of the amount required to pay all demands on the firemen's relief and pension fund for the succeeding fiscal year, and certify the same to the board of supervisors or other governing authority of the county, city and county, city or town, in connection with and as a part of the annual appropriation of the fire department, in conformity with the provisions of this act.

Sec. 12. The board of supervisors, or other governing authority of any county, city and county, city or town, shall, for the purposes of said "firemen's relief and pension fund" hereinbefore mentioned, have annually levied, collected and apportioned to the firemen's relief and pension fund, a tax sufficient to meet and pay all demands upon said fund for the purpose set out in this act.

Sec. 13. Any person who, within one year prior to the passage of this act, has been dismissed from the fire department for incompetency or inefficiency and which incompetency or inefficiency was caused solely by sickness or disability contracted or suffered while in service as a member thereof, and who has, prior to said dismissal, served for twelve years or more as such member, shall be entitled to all the benefits of this act.

Sec. 14. On the last day of June of each year, or so soon thereafter as practicable, the auditor of such county, city and county, city or town, shall make a report to the board of supervisors or other governing authority of such county, city and county, city or town, of all moneys paid out on account of said fund during the previous year, and of the amount then to the credit of the "firemen's relief and pension fund." Payments provided for in this act shall be made quarterly upon proper vouchers.

Sec. 15. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 16. This act shall take effect immediately.

An act to require the payment of certain premiums to counties, and cities and counties, by fire insurance companies not organized under the laws of the state of California, but doing business therein, and providing for the disposition of such premiums.

[Approved March 3, 1885; Stats. 1885, p. 13. Amended 1887, 15.]

Unconstitutional: San Francisco v. Insurance Co., 74 Cal. 113. The tax provided for in this act constituted the firemen's relief fund.

An act to authorize the board of supervisors of Santa Clara County to exempt firemen from the payment of poll taxes for county purposes.

[Approved March 30, 1874; 1873-4, 825; in effect immediately.]

The code commissioners say of this act, "Probably superseded by County Government Act, 1897, 452, and constitution of 1879, sec. 12, art. XIII."

An act to provide for increasing the efficiency of fire departments within municipalities of the first class in the state of California.

[Statute approved March 4, 1897; Stats. 1897, p. 61.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. Whenever the public interest, safety, or convenience may require, or it be deemed expedient, the city council of any municipality of the first class may, by ordinance, make and enforce such rules and regulations within said municipality as may be necessary or proper for increasing the efficiency of its fire department, and to that end, among other things, may provide for and authorize the appointment and continued employment of such officers, engineers, members, firemen, employees, and other help in and for said fire department, in addition to those whose employment is now or may be hereafter authorized by law, as the needs of said department may require; and may fix their salaries and compensation, and may increase the salaries and compensation of the officers, engineers, members, firemen, employees, and other help now or hereafter authorized by law, whose salaries and compensation as now or hereafter fixed, may be deemed inadequate. And said city council may in like manner provide for the purchase and repair, and authorize to be purchased and kept in repair, in addition to those for the purchase and repair of which provision is now or may be hereafter made by law, all additional engines, horses, hook and ladder wagons, and all such other engines, machinery, implements, extinguishers, and other apparatus that may

be necessary, advantageous, or auxiliary to extinguish or afford adequate protection against fire. And in order to provide the necessary funds with which to accomplish the foregoing ends, may make all necessary and supplementary appropriations, allowances, and payments in addition to those now or hereafter authorized by law.

Sec. 2. The officers, engineers, members, firemen, employees, and other help to be appointed as provided in section one of this act, shall be appointed, governed, and controlled in the same manner and by the same laws as their fellow officers, engineers, members, firemen, employees, and other help whose appointment is now or may be hereafter authorized by law are appointed, governed, and controlled. The engines, wagons, machinery, implements, extinguishers, and other apparatus, the purchase and repair of which are authorized by section one of this act, shall be purchased and repaired in like manner and under the same regulations as like articles, the purchase and repair of which are now or may be hereafter authorized by law are purchased and repaired.

Sec. 3. The term "city council," as used in this act, is hereby declared to include any body or bodies, board or boards, which, under law, constitute the legislative department of any municipality of the first class.

Sec. 4. This act shall take effect and be in force from and after its passage.

An act relating to fire departments of municipalities of the first class, and fixing the salaries of officers thereof.

[Statute approved March 27, 1897; Stats. 1897, p. 192.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. In municipalities of the first class the following officers of its fire department shall receive the following salaries per annum:

Chief engineer, five thousand dollars.

Assistant chief engineer, three thousand six hundred dollars.

Secretary, or clerk, three thousand dollars.

Assistant engineers, two thousand one hundred dollars each.

Veterinary surgeons, one thousand eight hundred dollars.

Said salaries shall be paid in the same manner as is now provided by law.

Sec. 2. This act shall take effect immediately.

The code commissioners say of this act, "Apparently unconstitutional under the rule announced in Popper v. Broderick, 123 Cal. 456."

FISH AND GAME WARDEN AND COMMISSIONERS.

An act to create the office of fish and game warden, and to prescribe the powers, duties, and salary of such officer.

[Statute approved March 26, 1895; Stats. 1895, p. 169.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. The board of supervisors of each and every county in the state may, in its discretion, at their first meeting held in April, eighteen hundred and ninety-five, and at their first meeting held in January, eighteen hundred and ninety-seven, and in January every two years thereafter, appoint a suitable person to serve for the period of two years from the date of his appointment as fish and game warden of the county, which office is hereby created; provided, that the person so appointed in April, eighteen hundred and ninety-five shall hold office only until January, eighteen hundred and ninety-seven, and until his successor is appointed and qualifies.

Sec. 2. Said fish and game warden shall enforce the state laws, and all county and municipal ordinances relating to the protection of fish and game, and he shall be vested with all the powers of a peace officer to make arrests for the violation of such laws and ordinances.

Sec. 3. The salary of said fish and game warden is hereby fixed, in accordance with the classification of counties, as follows:

Sec. 4. For counties of the first, second, and third classes, one hundred dollars per month; for counties of the fourth, fifth, and sixth classes, the sum of seventy-five dollars per month; for counties of the seventh, eighth, ninth, and tenth classes, the sum of sixty dollars per month, and for all other classes from the eleventh to the fifty-third, inclusive, the sum of fifty dollars per month.

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In addition thereto said warden shall be allowed a sum not to exceed twenty-five dollars per month for expenses incurred by him in the performance of his duties. Said salary and expenses incurred must be paid monthly from the county treasury. Said fish and game warden shall, before entering upon the discharge of his duties, execute a bond with sureties in such sum as may be required by the board of supervisors, for the faithful and proper discharge of his duties as such fish and game warden. Said warden shall report quarterly to the board of supervisors of his county, giving a detailed statement of all arrests made, convictions had, fines collected, and generally in regard to the management of his office. Such officers may be removed by the board of supervisors for intemperance, neglect of duty, or other good and sufficient reasons.

Sec. 5. This act shall take effect and be in force from and after its passage.

An act to provide for the construction, maintenance, and regulation of fish ways in streams naturally frequented by salmon, shad, and other migratory fish.

[Approved April 16, 1880; 1880, 121 (Ban. ed. 387).]

Duty of fish commissioner.

Section 1. It shall be the duty of the state board of fish commissioners to examine, from time to time, all dams and artificial obstructions in all rivers or streams in this state, naturally frequented by salmon, shad, or other migratory fish, and if, in their opinion, there is not free passage for fish over or around any dam or artificial obstruction, to notify the owners or occupants thereof to provide the same within a specified time with a durable and efficient fish way, of such form and capacity and in such location as shall be determined by the fish commissioners, or persons authorized by them. If such fish way is not completed to the satisfaction of said commissioners within the time specified, the owners or occupants of such dam or artificial obstruction shall be deemed guilty of a misdemeanor, and may be prosecuted by action, on complaint before any justice's court or justice of the peace in the county where such dam or artificial obstruction is situated, and, on conviction, shall be fined two hundred and fifty dollars, and the plaintiff shall recover full costs; and one half of such fine shall be for the benefit of and

shall be paid to the person making the complaint, and the other half shall be paid into the state treasury for the benefit of the fund for "preservation and restoration of fish," and may be expended by the state board of fish commissioners, in their discretion, for the obstruction and maintenance of fish ways.

Owners of dams to keep same in repair, etc.

Sec. 2. It shall be incumbent upon the owners or occupants of all dams or artificial obstructions, where the state board of fish commissioners require such fish ways to be provided, to keep the same in repair, and open, and free from obstructions to the passage of fish at all times; and any owners or occupants of any such dam or artificial obstruction who neglects or refuses to keep such fish way in repair, and open, and free from obstruction to the passage of fish, shall be guilty of a misdemeanor, and subject to the same fine, and which shall be recovered in the same manner, and applied to the same purposes, as provided in section one of this act.

Injuring fish ways, etc.—Misdemeanor.

Sec. 3. Any person who shall willfully or knowingly destroy, injure, or obstruct any such fish way, or any person who shall at any time take or catch any salmon, shad, or other migratory fish or trout, except by hook and line, within three hundred feet of any fish way required by the state board of fish commissioners to be provided and kept open, or shall take or catch any such fish in any manner within fifty feet of such fish way, shall be guilty of a misdemeanor, and subject to the same fine, and which shall be recovered in the same manner and applied to the same purposes, as provided in section one of this act.

Sec. 4. This act shall take effect and be in force from and after its passage.

Consult the following acts:

An act to authorize the board of fish commissioners of this state to build and maintain a salmon hatchery, and providing ways and means therefor.

[Approved March 9, 1885; Stats. 1885, p. 31; in effect immediately.]

An act to authorize the board of fish commissioners of this state to construct a steam launch to aid in carrying

out the purposes of said board, and providing for the payment of claims incurred in such construction.

[Approved March 12, 1885; Stats. 1885, p. 124; in effect immediately.]

An act to authorize the board of fish commissioners of the State of California to purchase or construct a gasoline launch, to aid in carrying out the purposes of said board, and appropriating money therefor.

[Statute approved March 31, 1897; Stats. 1897, p. 346; in effect immediately.]

An act to authorize the board of fish commissioners to dispose of the hatchery located on Battle Creek, in Tehama County, and to expend the proceeds of the same.

[Statute approved March 9, 1897; Stats. 1897, p. 89; in effect immediately.]

An act to authorize the state board of fish commissioners to import game birds into the state for propagation, and to appropriate money for that purpose, and providing a penalty for the shooting, trapping, killing, or otherwise destroying any of said birds within this state.

[Approved March 16, 1889; 1889, 304; in effect immediately.]

GOVERNOR.

An act to authorize the governor to employ a stenographer for his office, and to provide for the payment of his salary.

[Approved January 15, 1891; Stats. 1891, p. 1.]

Section 1. The governor of California is hereby authorized to appoint a stenographer to assist him in the duties of his office, and who shall serve during his pleasure. He shall perform such duties as may be assigned to him by the governor from time to time. The salary of such stenographer shall be sixteen hundred dollars per annum, payable as the salary of state officers.

Sec. 2. The sum of eight hundred dollars is hereby appropriated out of the general fund of the state treasury

for the payment of the salary of the stenographer during the forty-second fiscal year.

Sec. 3. This act shall take effect from and after its passage.

HARBOR COMMISSIONERS.

An act to provide penalties for failure to pay tolls, by false returns or otherwise, to any board of state harbor commissioners of the state of California.

[Approved March 10, 1891; Stats. 1891, p. 27.]

Section 1. Any person, corporation, firm, or association who shall, by false returns, or in any manner, avoid the payment of all or any portion of any tolls that may be due to any board of state harbor commissioners of the state of California, from any source or cause, as provided for by law and the rules and regulations of said board, shall be liable for and shall pay to said board twice the amount of such tolls, and in addition thereto the sum of ten dollars over and above such amount.

Sec. 2. This act shall take effect from and after its passage.

An act to empower the board of state harbor commissioners to rectify the alignment of East Street, from Pacific Street to Market Street, in the city and county of San Francisco, and to sell, acquire, and condemn adjacent property.

[Approved March 31, 1891; Stats. 1891, p. 270.]

Section 1. The board of state harbor commissioners is hereby authorized and directed to rectify the alignment of East Street, between Pacific Street and Market Street, in the city and county of San Francisco, said rectification to be done so as to straighten the property lines and give as wide and commodious a thoroughfare as the traffic may demand.

Sec. 2. In no case shall the alignment of the westerly side of said thoroughfare extend east of the inner line of the thoroughfare as now established and defined by law.

Sec. 3. The jurisdiction of the said board shall be westerly to the line as established under this act.

Sec. 4. The board, in carrying out this law, shall have the power to purchase and sell, and to exchange, upon a legal and equitable basis, any portion or portions of the

property adjacent to the westerly line of the thoroughfare herein provided for; and a full record of their proceedings shall be entered upon their minutes, and a sworn statement of all transfers, sales, and purchases, and other transactions, shall be filed with the secretary of state. Said statements shall show in full all payments and receipts, itemized so as to definitely exhibit the price or prices of each parcel of land transferred.

Sec. 5. In case of failure on the part of the interested parties to come to a satisfactory agreement, the board shall have the power to condemn, as in other cases, for public purposes.

Sec. 6. This act shall take effect from and after its passage.

An act empowering and authorizing the board of state harbor commissioners to insure against loss or damage by fire the property of the state of California located on the water-front at San Francisco, California.

[Approved March 25, 1901; Stats. 1901, p. 809.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. The board of state harbor commissioners are hereby empowered and authorized to insure against loss or damage by fire the wharves, docks, piers, slips, bulkheads, and structures contained thereon, and improvements located inside and outside of the water-front line, the property of the state of California, and under the control and supervision of the board of state harbor commissioners, situate on the water-front at San Francisco, California.

Sec. 2. This insurance is to be effected and distributed at the discretion and under the direction of the board of state harbor commissioners. The aggregate amount of such fire insurance placed not to exceed the sum of five hundred and fifty thousand dollars, and the cost of same not to exceed the amount of eleven thousand dollars in premiums for policies to be written for a three-years term. Said cost to be defrayed and paid out of the San Francisco Harbor improvement fund.

Sec. 3. All acts and parts of acts in conflict herewith are hereby repealed.

Sec. 4. This act shall take effect immediately.

An act to authorize and empower the board of state harbor commissioners to institute condemnation proceedings against certain property on the corner of Market, Sacramento, and East streets, in the city and county of San Francisco, and extending their jurisdiction over the same.

[Approved March 26, 1895; Stats. 1895, p. 79.]

Section 1. For the purpose of acquiring terminal facilities for the landing of passengers to and from the passenger and ferry depot at the foot of Market Street, in the city and county of San Francisco, the board of state harbor commissioners is hereby authorized and empowered to institute condemnation proceedings in the superior court of the city and county of San Francisco, against all parties in interest claiming any title in and to that certain lot, piece, or parcel of land in the city and county of San Francisco, bounded and described as follows, to wit:

Commencing at a point on the westerly line of East Street, distant thereon sixty (60) feet and four (4) inches northerly from the northwesterly corner of the intersection of the northerly line of Market Street with said westerly line of East Street; thence southerly along said westerly line of East Street sixty (60) feet and four (4) inches to the intersection of said line of East Street with the northerly line of Market Street; thence westerly along the northerly line of Market Street eighteen (18) feet and six (6) inches to the intersection of the northerly line of Market Street with the north line of Sacramento Street; thence west along the north line of Sacramento Street seventy-nine (79) feet and eleven (11) inches to a point on said north line of Sacramento Street; thence northeasterly to the point of beginning.

Sec. 2. The inshore limit of the jurisdiction of said board shall be, and is hereby, extended so as to include the lot of land described in section one of this act.

Sec. 3. The board of state harbor commissioners may institute any action or actions, and prosecute the same to final judgment for the condemnation of any portion of the premises described in section one of this act; and the purposes herein mentioned are hereby declared to be a public use in which the right of eminent domain may be exercised by the board of state harbor commissioners

in the name of the people of the state, for the estates and rights, and in the manner provided in part three, title seven, of the Code of Civil Procedure of this state.

Sec. 4. The board of state harbor commissioners is hereby authorized to pay any judgment rendered against them in such condemnation proceedings, by a draft drawn upon the controller of the state, who shall draw his warrant therefor on the state treasury, payable out of any money in said treasury credited to the San Francisco Harbor improvement fund.

Sec. 5. This act shall take effect from and after its passage.

An act to authorize the state board of harbor commissioners to establish and maintain a free public market upon the water-front of San Francisco, and providing for the expenses and regulations thereof.

[Approved March 29, 1897; Stats. 1897, p. 238. Am'd. 1903, 76.]

This act was amended in all its parts by the act of 1903, as follows:

An act to amend an act entitled "An act to authorize the state board of harbor commissioners to establish and maintain a free public market upon the water-front of San Francisco, and providing for the expenses and regulations thereof," approved March 29, 1897.

[Approved March 2, 1903; Stats. 1903, 76.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. The board of state harbor commissioners shall, within one year from the passage of this act, set apart upon some convenient portion of the water-front of San Francisco a sufficient number of blocks and parts of blocks belonging to the state contiguous to the docks and piers for a free market for the greater portion of all the perishable products of the state of California arriving in San Francisco by land, boat, or other conveyance, including fruit, vegetables, eggs, poultry, grain, dairy products, and fish, and shall permit the sale of such products upon said blocks and portions of blocks of land by or for the account of the producers thereof only, under such regulations as may be prescribed by the said board of

harbor commissioners and as the public convenience may require.

Sec. 2. The land so set apart for the free public market shall be as convenient as possible to that portion of the city and county of San Francisco in which the principal wholesale trade in perishable products is now carried on, and must be adjacent and contiguous to such piers and docks as are accessible to all watercraft ordinarily employed in carrying such products upon the waters of San Francisco Bay and the navigable waters contributing thereto, and vessels so loaded shall have the preference at all times at docking at such wharves and piers contiguous to said lands over other vessels not so loaded.

Sec. 3. Docking room at said piers shall be assigned without partiality to all vessels engaged in the transportation of said products, and the space assigned shall be sufficient to permit such vessels regularly running upon a route to receive and discharge their entire cargoes of such products at the piers aforesaid, if they so desire, subject to the control and direction of the board of state harbor commissioners. And the said board of state harbor commissioners shall construct car tracks to connect the said docks and piers with the land so set apart for the free public market and with the belt railroad. For the use of these tracks the state harbor commissioners shall prescribe such regulations as public convenience may require, and fix the compensation to be paid by the companies making use of them for this purpose.

Sec. 4. The harbor commissioners shall suitably inclose said free market and construct suitable tramways and tracks or other devices for the rapid conveyance of perishable products from car or boat or other conveyance to the stalls in the free market, and operate the same.

Sec. 5. The harbor commissioners shall assign space within the free market to all producers of perishable products, under such regulations as the harbor commissioners may prescribe. No rental shall be charged for space in the free market. Any violation of this act, or of the regulations made pursuant thereof, shall exclude the person or firm guilty of such violation from the privilege of selling in the free market, during the pleasure of the harbor commissioners, not exceeding one year,

in addition to any other penalty which may be incurred thereby.

Sec. 6. For the payment of the expenses of said free market the said board of state harbor commissioners may, in their judgment, so adjust tolls upon the said perishable products as shall be delivered into said free market as to provide the necessary revenue; provided, however, that no one shall be compelled to enter into said free public market, and no tolls for the purpose of paying the expenses of said free market shall be levied, assessed, or inflicted upon any products not entering into said free public market; and provided further, that the total of such tolls so levied shall not exceed the total expense of maintaining such free market.

Sec. 7. The officers of said free market shall be a superintendent and assistant superintendent, who shall also be secretary, and such other employees as the state board of harbor commissioners may appoint. The salary of all employees of said free market shall be fixed by the state board of harbor commissioners, and be paid out of the general fund of said harbor commission the same as other employees.

Sec. 8. All officers and employees of any public market on state property are officers and employees of the state, and shall qualify in the same manner as other employees, and give such bonds as the harbor commissioners may prescribe.

Sec. 9. There is hereby appropriated out of the San Francisco Harbor improvement fund the necessary moneys to enable the harbor commissioners to carry this act into effect, and this appropriation shall have precedence of all other claims on such fund for improvements.

An act to authorize the board of state harbor commissioners to make repairs upon private wharves in their possession.

[Approved March 26, 1874; 1873-4, 663.]

Maintenance of wharves.

Section 1. The board of state harbor commissioners are hereby authorized and empowered, in their discretion, to repair and maintain any wharf or wharves in their possession or under their control, notwithstanding such

wharf or wharves may belong to private parties, and to pay the expenses thereof in the same manner as is now provided for the repairs or maintenance of the wharves of the state; provided, however, that such authority to repair and maintain private wharves shall terminate with the termination of the possession or control of the same on the part of said board.

Sec. 2. This act shall take effect immediately after its passage.

An act to authorize the compromise of certain litigation concerning a portion of the water-front of the city and county of San Francisco.

[Approved April 3, 1876; 1875-6, 905.]

This act authorizes the governor, mayor of San Francisco, and board of state harbor commissioners to compromise and settle with claimants for the premises lying between Jackson and Pacific streets, and outside of the water-front line as established by the beach and water lot act of March 26, 1851. The compromise contemplated was to accept deeds of the entire property to the state, and pay therefor such amount as might be determined on out of the San Francisco Harbor improvement fund.

NATIONAL GUARD.

An act to define the duties of inspectors of rifle practice of the National Guard of California.

[Approved March 30, 1878; 1877-8, 758.]

This act was incorporated in the Political Code in 1897. See sec. 2008.

An act to provide for independent and unattached companies of the National Guard of the state of California, and to provide for the manner of making allowances for the use and support of such companies.

[Approved March 8, 1901; Stats. 1901, 110.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. Any military organization composed of veterans of the civil war, and having the minimum number required to constitute a company, if, upon the required examination they be found capable of efficient service to

the state in the performance of active, garrison, or other military duty, may be organized and mustered into the military service of the state, notwithstanding the members thereof may be over the age of forty-five years; and such companies or organizations when so constituted shall be mustered into, and become a part of, the National Guard of the state, and shall be subject to all the laws regulating and governing the National Guard, except that they shall be deemed and considered independent, unattached companies, acting under the direct orders of the commander-in-chief.

Sec. 2. Such companies shall receive such allowances as may be approved and allowed by the state board of military auditors out of any moneys appropriated for the use of such companies; provided, however, that such allowances shall in no case exceed the sum of five hundred dollars for any one of such companies for any one fiscal year.

Sec. 3. This act shall take effect and be in force from and after its passage.

Consult also the following acts:

An act to authorize the acquisition, by donation, of a site or sites for camps of instruction for the National Guard of the state of California, and to improve the same.

[Approved March 9, 1893; Stats. 1893, p. 123; in effect immediately.]

Probably repealed by Stats. 1899, 65.

An act establishing a camp of instruction and authorizing the acquisition by donation of a site for the same.

[Approved March 4, 1899; Stats. 1899, p. 65; in effect immediately.]

An act providing encampments shall be held at the camp of instruction.

[Approved March 20, 1899; Stats. 1899, p. 148; in effect immediately.]

An act to ascertain the expense of mustering the National Guard into the United States army and the expense of reorganizing the same.

[Approved March 8, 1899; Stats. 1899, p. 80; in effect immediately.]

An act regarding privileges and exemptions of members entering United States volunteer service.

[Approved March 21, 1899; Stats. 1899, p. 158; in effect immediately.]

See Pol. Code, secs. 1936, 1973a, as am'd. 1901, 581, 585.

NAVAL BATTALION.

An act to establish a naval battalion, to be attached to the National Guard of California.

[Approved March 1, 1893; Stats. 1893, p. 62; in effect immediately.]

Consult the statutes of 1893 for the act.

NORMAL SCHOOLS.

Consult the following acts:

An act to establish a branch state normal school in northern California.

[Approved March 9, 1887; Stats. 1887, p. 60; in effect immediately.]

An act to establish a state normal school in San Francisco.

[Approved March 22, 1899; Stats. 1899, p. 177; in effect immediately.]

An act to establish a branch state normal school.

[Approved March 14, 1881; Stats. 1881, p. 89; in effect immediately.]

The act established a state normal school at Los Angeles. See also Stats. 1883, p. 281.

An act to provide for the construction and furnishing of an additional school building for the use of the state normal school at Los Angeles, California, and to appropriate money therefor.

[Approved March 9, 1893; Stats. 1893, p. 120; in effect immediately.]

Seventy-five thousand dollars was appropriated for the purpose indicated.

An act to provide for the construction and furnishing of a manual and gymnasium building for the use of the state normal school at Los Angeles, California, and to appropriate money therefor.

[Approved March 19, 1889; Stats. 1889, p. 333; in effect immediately.]

Ten thousand dollars was appropriated for the purpose indicated.

An act establishing a state normal school in San Diego County, California, and making an appropriation of fifty thousand dollars therefor.

[Approved March 13, 1897; Stats. 1897, p. 114; in effect immediately.]

An act to provide for the erection of additional buildings for the use of the state normal school at San Jose, California, and making an appropriation therefor.

[Approved April 6, 1891; Stats. 1891, p. 497; in effect immediately.]

Thirty-seven thousand dollars was appropriated for the purpose indicated.

An act authorizing and empowering the board of school trustees of the city of San Jose, county of Santa Clara, state of California, to erect, construct, and build, and maintain, at the expense of the said city of San Jose, a high school building on the north side of the state normal school grounds at San Jose between Fifth and Seventh streets in said city.

[Statute approved March 17, 1897; Stats. 1897, p. 167; in effect immediately.]

An act authorizing the trustees of the normal school at San Jose to reconvey to the city of San Jose a parcel of land for a free library. [Stats. 1901, 575.]

NOTARIES.

See post, title San Francisco.

OFFICERS.

An act to protect candidates for certain public offices, to prohibit certain acts by such candidates, and to provide a punishment for infractions of this law.

[Statute approved March 2, 1897; Stats. 1897, p. 53.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. It shall be unlawful for any person, either

individually or as an officer or member of any committee or association, to demand or solicit of any candidate for the legislature, or of any candidate for supervisor, or of any candidate for school director, or of any candidate for any legislative body, that he shall vote for any particular bill or specific measure which may come before any such legislative body to which he may be elected; provided always, that this inhibition shall not in any case apply to the pledges exacted of a candidate by the platform or resolutions of any convention by which any such candidate may be nominated.

Sec. 2. It shall be unlawful for any candidate for the legislature, or for any candidate for supervisor, or for any candidate for school director, or for any candidate for any other legislative body, to sign or give any pledge that he will vote for or against any particular bill or specific measure that may be brought before any such legislative body; provided always, that this prohibition shall not apply to any pledge or promise that any such candidate may give to a convention by which he may be nominated for any such office, or to those who may sign a certificate for his nomination.

Sec. 3. Any person violating any provision of this act shall be deemed guilty of a misdemeanor, and any candidate violating any provision of this act shall, in addition, be disqualified from holding the office to which he may be elected.

An act to make women eligible to educational offices.

[Approved March 12, 1874; 1873-4, 356.]

Women eligible.

Section 1. Women over the age of twenty-one years, who are citizens of the United States and of this state, shall be eligible to all educational offices within this state except those from which they are excluded by the constitution.

Sec. 2. All acts and parts of acts in conflict with this act are hereby repealed. This act shall take effect from and after its passage.

An act prescribing certain duties to be performed by the state controller, state treasurer, and state board of examiners.

[Approved February 20, 1872; 1871-2, 118.]

Section 1. The state controller shall furnish to the state treasurer, on the tenth, twentieth, and last days of each month, and when either of these days falls upon a day on which the state controller is not required to keep his office open for the transaction of business, then upon the day immediately preceding the days herein mentioned, with a report of all warrants drawn by him upon the treasurer since the date of his last report. Such report shall show the number, date, and amount of each warrant, to whom issued, and the fund out of which it is payable. From the report so furnished by the controller, the state treasurer shall make a register of warrants, and shall pay all warrants in the order in which they are drawn by the controller.

Sec. 2. Upon the last day of each month, except when such last day falls upon a day on which the state treasurer is not required by law to keep his office open for the transaction of business, then upon the day immediately preceding such last day, the state treasurer shall furnish the state controller with a list of all warrants paid by him since the date on which his last list was furnished. Such list shall contain the number, date, and amount of each warrant, and the fund out of which the same was paid.

Sec. 3. Immediately after the passage of this act, it shall be the duty of the state controller and state treasurer, under the supervision of the governor, to ascertain the numbers, dates, and amounts of the several warrants drawn by the controller, and then unpaid by the treasurer, and to adjust the balances in the several funds of the state treasurer upon the books of the controller and treasurer in accordance with the sums found to the credit of each on the books of the controller, and the warrants found to be outstanding and not paid by the treasurer.

Sec. 4. When the balances in the several funds of the state treasury shall be adjusted as provided for in the next preceding section, the state board of examiners shall count the money in the state treasury, and compare the amount with the amount found to be in all the funds of the state treasury by the books of the state controller, and upon the first business day of each month thereafter, the state controller shall furnish the state board of examiners with a statement of the amount of money in each

fund of the state treasury, and the total amount as the same appears upon the books of his office, together with a list of warrants issued by him but not paid by the state treasurer, and for the payment of which there is money in the state treasury. Upon the receipt of such statement from the controller, the state board of examiners shall proceed to count the money in the state treasury, and compare the amount with the amount named in the statement of the controller.

Sec. 5. Whenever any warrant issued by the state controller shall remain in his office uncalled for by the owner thereof for the period of one year after such warrant has become payable, it shall be the duty of the controller and treasurer, in the presence of the state board of examiners, to cancel the same; and whenever any warrant, delivered to the owner thereof by the controller, but not presented to the state treasurer for payment for a period of one year after such warrant has become payable, said warrant shall be deemed to be canceled, and the treasurer shall in the presence of the controller and state board of examiners, write the word "Canceled" opposite the entry of such warrant in his registry of warrants provided for in the first section of this act. The word "Canceled" shall also be written by the state controller opposite the entry in the warrant register in his office of all warrants required to be canceled by this act. The amounts of all warrants canceled under the provisions of this act shall revert to the fund in the state treasury against which said warrants were drawn, and shall be entered upon the books of the controller to the credit of such fund, in the same manner as other moneys paid into the state treasury.

Sec. 6. The controller and treasurer shall each keep a register of warrants canceled under this act, in which shall be entered the number, date, and amount of the warrant, the name of the person in whose favor it was drawn, the fund out of which it was payable, and the date of cancellation. Whenever the owner of any warrant canceled under the provisions of this act demands such warrant from the controller, it shall be the duty of the controller to issue a new warrant for the same amount, in the name of the same person, and payable out of the same fund as the warrant canceled; and in case where a warrant

issued by the controller, but not paid by the treasurer, has been canceled, and the owner or holder thereof presents the same for payment, it shall be the duty of the state controller to draw a new warrant therefor, in the name of the same person, for the same amount, and payable out of the same fund as the original warrant, and such original warrant shall thereupon be canceled by him and retained in his office as his voucher for issuing such new warrant. In all cases where a warrant shall be issued in lieu of one canceled, the word "Duplicate" shall be plainly written or printed across the face thereof, in red ink, by the controller, and the issue thereof noted on the registry of canceled warrants kept in his office, and when any such duplicate warrant is paid by the state treasurer, he shall note the payment thereof on the registry of canceled warrants kept in his office.

Sec. 7. Whenever the interest coupons attached to any registered bond of this state issued under either of the following named acts, to wit: An act to provide for paying certain equitable claims against the state of California, and to contract a funded debt for that purpose, approved April 28, 1857; an act to amend an act entitled, An act to provide for paying certain equitable claims against the state of California, and to contract a funded debt for that purpose, approved April 28, 1857, approved April 27, 1860; an act for the relief of the enlisted men of the California volunteers in the service of the United States, approved April 27, 1863; an act granting bounties to the volunteers of this state, enlisted in the service of the United States, for issuing bonds to provide funds for the payment of the same, and to levy a tax to pay such bonds, approved April 4, 1864; and an act authorizing the issuance of state bonds to the amount of two hundred and fifty thousand dollars, to be known as state-capitol bonds, approved April 4, 1870—shall not be presented to the state treasurer for payment for a period of one year after such coupon has become due and payable, it shall be the duty of the state treasurer to furnish the state controller and state board of examiners each with a list of such coupons not presented for payment, with the amount thereof, whereupon the state controller shall order the treasurer to place the money held by him for the payment of such coupons into the general fund of the state

treasury, and the amount so ordered into the general fund shall be placed to the credit of said fund on the books of the controller and treasurer in the same manner as other moneys paid into the state treasury.

Sec. 8. Whenever any of the interest coupons mentioned in the seventh section of this act are presented for payment, after the money to pay the same has been transferred to the general fund, such coupons shall be presented to the state board of examiners, which board shall audit and allow them out of the general fund of the state treasury, and shall transmit a voucher to the state controller upon which to draw his warrant upon the state treasurer. Upon the presentation of such warrant and the surrender to him of the coupons for the payment of which the said warrant is drawn, the state treasurer shall pay the same out of the general fund.

Sec. 9. Immediately after the passage of this act the state board of examiners shall examine the books in the state treasurer's office in which are pasted the coupons of the registered bonds of the state paid by him, and shall require the state treasurer to make out a list of all coupons not found therein, as provided for in section seven of this act, and the money held by him for the payment thereof shall be placed in the general fund, as provided in this act.

Sec. 10. This act shall take effect from and after its passage.

An act providing for the removal of civil officers for a violation of official duties.

[Approved March 30, 1874; 1873-4, 911.]

The code commissioners say of this act: "Repealed by the constitution of 1879 and the County Government Acts: Fraser v. Alexander, 75 Cal. 147."

ORPHAN ASYLUMS.

Act to provide for appointment of guardians for orphans.

See Civil Code, title Infancy.

PILOTS.

Consult the following acts:

An act to establish pilots and pilot regulations for the port of San Diego.

[Approved March 26, 1872; 1871-2, p. 650; in effect immediately.]

An act to provide for the appointment of pilots, and defining their duties and compensation, at the port of Wilmington and bay of San Pedro.

[Approved March 19, 1889; Stats. 1889, p. 416; in effect immediately.]

POLICE DEPARTMENT.

An act to regulate the salaries of certain officers in the police department within municipalities of the first class in the state of California, and to provide for the appointment and salaries of other officers of such departments.

[Statute approved March 8, 1897; Stats. 1897, p. 72.]

Unconstitutional: Popper v. Broderick, 123 Cal. 456.

PUBLIC ADMINISTRATOR.

An act to provide for public administrators in certain cases.

[Approved March 30, 1872; 1871-2, 796.]

The code commissioners say of this act: "Repealed by County Government Act, 1897, 490, secs. 142-147, prescribing the duties of coroner."

SAN FRANCISCO.

An act providing for the appointment of an additional notary public for the city and county of San Francisco for the accommodation of the inhabitants of said city and county at the Presidio.

[Approved April 16, 1880; 1880, 106 (Ban. ed. 345).]

This act was superseded by sec. 791, Pol. Code. See next act.

An act authorizing the appointment of a notary public in the city and county of San Francisco, to reside and transact notarial duties at Yerba Buena Island, or Goat Island, in the bay of San Francisco, in addition to the number of notaries now authorized by law for said city and county.

[Approved February 13, 1903; Stats. 1903, 26.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. The governor is hereby authorized and empowered to appoint and commission one notary public in and for the city and county of San Francisco, to reside and transact his notarial duties at Yerba Buena Island, known as Goat Island, in the bay of San Francisco, in addition to the number of notaries now authorized by law to be appointed in said city and county. Such notary shall be subject to the general laws relating to notaries public.

Sec. 2. This act shall take effect immediately.

SHERIFFS.

An act to authorize the boards of supervisors to furnish the sheriff and deputy sheriffs of their several counties with a suitable badge of office.

[Approved April 1, 1876; 1875-6, 803.]

Sheriff's badges.

Section 1. The boards of supervisors of the several counties of this state must furnish to the sheriff, undersheriffs, and deputy sheriffs, of their respective counties a suitable badge of office, upon which shall be inscribed the words "sheriff" and "deputy sheriff."

Sec. 2. This act shall take effect from and after its passage.

An act to amend an act entitled "An act to allow compensation to sheriffs for conveying prisoners to state prisons and insane persons to the insane asylums," approved March 14, 1885, providing for compensation to sheriffs for service rendered since the fourteenth day of March, eighteen hundred and eighty-five.

[Approved March 15, 1889; 1889, 200.]

The act of 1885 was entirely amended by this act.

Section 1. An act entitled "An act to allow compensation to sheriffs for conveying prisoners to the state prisons and insane persons to the insane asylums," is hereby amended so as to read as follows:

Section 1. There shall be allowed by the state board of examiners to the sheriff, to be retained by him for his own use, for delivering a prisoner to either of the state prisons, actual expenses, and five dollars per diem for the time necessarily consumed in delivering such prisoner.

Sec. 2. There shall be allowed by the state board of examiners to the sheriff, to be retained by him for his own use, for delivering any insane person to either of the insane asylums, his actual expenses, and the same per diem as is allowed in section one of this act.

Sec. 3. The sheriff shall be allowed, and is entitled to receive and retain for his own use, the same compensation and expenses for all like services mentioned in sections one and two of this act, rendered by him since the fourteenth day of March, eighteen hundred and eighty-five.

Sec. 4. This act shall take effect and be in force from and after its passage.

STATE.

Acts relating to suits against: See Code of Civil Procedure, Appendix, title State.

An act authorizing the allowance, settlement, and payment of claims of counties against the state.

[Approved March 9, 1893; Stats. 1893, p. 109.]

Section 1. On the presentation of the claim of any county of this state, or treasurer thereof, to the state controller for commissions, charges, or fees fixed or directed to be allowed by law for the collection of state taxes, the said commissions, charges, or fees for which claim is made, not having been allowed by the state, and the same having been paid into the state treasury, thereupon the state controller shall, in the next settlement thereafter to be made with the treasurer of the county presenting such claim, allow to be retained out of any moneys then in the hands of such treasurer belonging

to the state, the amount of such claim; provided, however, that the moneys thus retained shall be paid into the county treasury, and shall be the property of such county.

Sec 2. This act shall take effect immediately.

An act to authorize the payment of claims against the state, which were incurred under an act to promote drainage, approved April 23, 1880, and to appropriate money for their payment.

[Approved March 4, 1889; 1889, 55; in effect immediately.]

Twenty thousand dollars was appropriated for the purpose indicated.

STATE ANALYST.

An act to provide for analyzing the minerals, mineral waters, and other liquids, and the medicinal plants of the state of California, and of foods and drugs, to prevent the adulteration of the same.

[Approved March 9, 1885; Stats. 1885, 43.]

Section 1. The governor of the state of California shall appoint one of the professors of the State University of California, of sufficient competence, knowledge, skill, and experience, as state analyst, whose duty it shall be to analyze all articles of food, drugs, medicines, medicinal plants, minerals, and mineral waters, and other liquids or solids which shall be manufactured, sold, or used within this state, when submitted to him, as hereinafter provided.

Sec. 2. The state board of health and vital statistics, or medical officers of health of any city, town, or of any city and county, or county, may, at the cost of their respective boards or corporations, purchase a sample of any food, drugs, medicines, medicinal plants, mineral waters, or other liquids offered for sale in any town, village, or city in this state, and submit the same to the state analyst as hereinafter provided; and said analyst shall, upon receiving such article duly submitted to him, forthwith analyze the same, and give a certified certificate to the secretary of the state board of health submitting the same, wherein he shall fully specify the result of the analysis;

and the certificate of the state analyst shall be held in all the courts of this state as prima facie evidence of the properties of the articles analyzed by him.

Sec. 3. Any person desiring an analysis of any food, drug, medicine, medicinal plant, soil, mineral water, or other liquid, shall submit the same to the secretary of the state board of health, together with a written statement of the circumstances under which he procured the article to be analyzed, which statement must, if required by him, be verified by oath, and it shall be the duty of the secretary of the state board of health to transmit the same to the state analyst, the expenses thereof to be defrayed by the said board.

Sec. 4. The state analyst shall report to the state board of health the number of all the articles analyzed, and shall specify the results thereof, to said board annually, with full statement of all the articles analyzed, and by whom submitted.

Sec. 5. The state board of health may submit to the state analyst any samples of food, drugs, medicines, medicinal plants, mineral waters, or other liquids, for analysis, as hereinbefore provided.

Sec. 6. It shall be competent for the mineralogist of the state of California to submit to the state analyst any minerals of which he desires an analysis to be made; provided, that the cost of the same shall be defrayed by the mineralogical bureau.

Sec. 7. The board of state viticultural commissioners shall have the same privileges as are provided for the state board of health under this act with respect to samples of wines and grape spirits, and of all liquids and compounds in imitation thereof, and any person or persons desiring analyses of such products shall submit the same to the secretary of the said board of state viticultural commissioners, and the same shall be transmitted to the state analyst, in the manner prescribed in section three of this act. The analyses shall be made, and the certificates of the state analyst shall be forwarded to the secretary of the said board of state viticultural commissioners, and shall have the same force and effect as provided for in section two of this act, with respect to analyses made for the state board of health.

SUPERVISORS.

An act to authorize the boards of supervisors of the several counties of this state to transfer certain funds.

[Approved April 23, 1880; 1880, 133 (Ban. ed. 399).]

Superseded by subd. 13, sec. 25, 1897, 463, County Government Act.

SUPREME COURT REPORTERS.

An act to provide for the appointment of a deputy supreme court reporter, and to regulate his compensation.

[Approved February 26, 1881; Stats. 1881, 9; in effect immediately.]

The nature of the act appears from the title.

SURVEYOR-GENERAL.

An act making an appropriation for the payment of an indebtedness created or to be incurred by the surveyor-general, in transcribing records and plat books in his office.

[Approved February 27, 1893; Stats. 1893, p. 43; in effect immediately.]

Fifteen hundred dollars was appropriated for the purpose indicated.

An act authorizing the state surveyor-general to furnish his office and vault therein, and making an appropriation therefor.

[Approved March 20, 1903; Stats. 1903, 252.]

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. The state surveyor-general is hereby authorized to furnish his office in the state capitol with modern metallic filing and book cases; to furnish the vault in his office with modern metallic fixtures, and such other furnishings, fixtures, and repairs in the said office and vault therein, as he may deem necessary for the proper transaction of the business of his office and the better protection of moneys, books, bonds, vouchers, papers and documents committed to his official care.

Sec. 2. There is hereby appropriated out of any money in the state treasury not otherwise appropriated, for the purpose herein authorized, the sum of five thousand dollars, or so much thereof as may be necessary.

Sec. 3. The state board of examiners shall examine, audit, and allow all demands arising under this act, and the state controller shall thereupon draw his warrrant therefor, payable out of the general fund, and the state treasurer is hereby directed to pay the same.

Sec. 4. This act shall be exempt from the provisions of an act approved March twenty-third, eighteen hundred and seventy-six, relating to erections and buildings.

Sec. 5. This act shall be in force and take effect from and after January first, nineteen hundred and four.

TREASURERS.

Consult the following acts:

An act relating to treasurers, their deputies and clerks, in counties and cities and counties having a population of two hundred thousand inhabitants or over.

[Approved March 23, 1893; Stats. 1893, p. 282.]

Section 1. In all counties and cities and counties having a population of two hundred thousand inhabitants or over, the treasurer may appoint deputies and clerks as follows: One chief deputy, who shall receive a salary of two hundred and fifty ($250) dollars per month; one clerk, who shall receive a salary of one hundred and twenty-five ($125) dollars per month; and two additional deputies, who shall receive a salary of one hundred and seventy-five dollars ($175) per month each. Said salaries shall be audited, allowed, and paid out of the general fund.

Sec. 2. All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 3. This act shall take effect from and after its passage.

Superseded as to San Francisco by the charter of that city.

An act authorizing the controller and treasurer to transfer to the general fund all moneys now in the state drainage construction fund, and also, from time to

time, to transfer to the general fund all moneys that may hereafter be paid into the state drainage construction fund.

[Approved March 31, 1891; Stats. 1891, p. 237; in effect immediately.]

An act authorizing the controller and treasurer to transfer to the general fund all moneys to the credit of the construction fund of drainage district number one, and also, from time to time, to transfer to the general fund all moneys that may hereafter be paid into said construction fund of drainage district number one.

[Approved March 31, 1891; Stats. 1891, p. 279; in effect immediately.]

An act authorizing the controller and treasurer to transfer to the general fund all moneys now in the election reward fund, the leprosy fund, and interest and sinking fund, levee district number five, and abolishing the leprosy fund and interest and sinking fund, levee district number five.

[Approved February 23, 1893; Stats. 1893, p. 6; in effect immediately.]

An act authorizing governor to transfer funds.

[Approved March 20, 1899; Stats. 1899, p. 156; in effect immediately.]

An act requiring payment into state treasury of all moneys belonging to the state.

[Approved March 17, 1899; Stats. 1899, p. 110; in effect immediately.]

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